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CASE IPR 2023-00726

MOM ENTERPRISES, LLC,	)	IN THE UNITED STATES
	)	PATENT AND TRADEMARK
Petitioner,	)	OFFICE
	)	
vs.	)	
	)	BEFORE THE PATENT TRIAL
ELAINE AND REINHOLD W.	)	AND APPEAL BOARD
VIETH,	)	
	)	
Patent Owners.	)	Patent 9,066,958

* * * * *

DEPOSITION OF

ROBERT O. WILLIAMS, III

DECEMBER 7, 2023

* * * * *

DEPOSITION OF ROBERT O. WILLIAMS, III,
having been duly sworn by Kenswil Paige, Notary Public
in and for the State of Texas. The witness appeared
at 1120 S. Capital of Texas Highway, Building One,
Suite 200 in Austin, Texas, at 9:07 a.m., pursuant to
Texas Rules of Civil Procedure, and any provisions
stated on the record or attached hereto.

Vieth Ex. 2025 IPR2023-00726

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Also Present:

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(Patent Owners' Exhibits 17 through 23 were not provided to the reporter at the time of certification and are, therefore, not attached to the original transcript.)

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(Exhibit 23 was not provided to the reporter at the time of certification and are, therefore, not attached to the original transcript.)

1 THE REPORTER: We are now on the record. At
2 9:08 a.m. on December 7, 2023 to take the deposition
3 of Robert O. Williams, III -- give me one second -- in
4 the case of MOM Enterprises, LLC versus Elaine and
5 Reinhold W. Vieth IPR 2023-00726, Patent 9,066,958B2.

6 My name is Kenswil Paige, a Notary public in
7 the state of Texas. I'll be capturing the verbatim
8 record of today's proceeding through a non
9 stenographic recording utilizing electronic audio
10 equipment, a computer, and specialized recording
11 software.

12 The witness is located in Austin, Texas and
13 has confirmed their identity with the Texas driver's
14 license issued by the Texas Department of Public
15 Safety.

16 Will everyone in attendance please identify
17 yourselves for the record and state who you represent.

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

20 MR. ANDERSON: Alan M. Anderson, Alan Anderson
21 Law Firm, LLC, on behalf of patent owners, Reinhold
22 and Elaine Veith.

23 MR UNGERMAN: Mark Ungerman of Ungerman IP,
24 PLLC on behalf of patent owners.

25 MR. REID: Steve Reid of Schwegman Lundberg &

1 Woessner on behalf of Baptiste.

2 THE REPORTER: All right. Absent any
3 objection to my swearing in the witness and the use of
4 this transcript for any purposes allowed by the Texas
5 Code of Civil Procedure, I will now swear in the
6 witness. Hearing no objections, I'll now swear in the
7 witness.

8 Can you please raise your right hand? Thank
9 you.

10 ROBERT O. WILLIAMS, III
11 having first been duly sworn, testified as follows:

12 THE WITNESS: I do.

13 THE REPORTER: All right.

14 Counsel, you may now begin.

15 MR. ANDERSON: Thank you.

16 EXAMINATION

17 BY MR. ANDERSON:

18 Q. Would you please state your full name and
19 present home address for the record, sir.

20 A. Yes. Robert O. Williams, III. Home address
21 is 2305 A West Lake Drive, Austin, Texas, 78746.

22 Q. Are you appearing here today represented by
23 counsel?

24 A. Yes.

25 Q. And is that Ms. Patel seated to your left?

1 A. Yes.

2 Q. You understand that you are under oath here
3 today, the same as you would be if you were in court
4 testifying?

5 A. Yes.

6 Q. Have you ever previously given testimony in an
7 interparty's review or IPR proceeding?

8 A. I have.

9 Q. On how many occasions, sir?

10 A. I don't recall.

11 Q. Was it more than five?

12 A. I really -- I don't -- I don't know sitting
13 here.

14 Q. Was it more than 10?

15 A. Probably not, no.

16 Q. Okay. Have you given testimony or when was
17 the last time you gave testimony in an IPR proceeding?

18 A. I don't recall specifically. It's probably
19 been more than five years.

20 Q. You --

21 A. Sorry. But I -- I don't recall exactly, so...

22 Q. Have you been retained to provide an opinion
23 or testimony as an expert witness previously by the
24 law firm of Fish & Richardson?

25 A. I have, yes.

1 Q. On how many occasions, sir?

2 A. Two occasions.

3 Q. Does that include this occasion?

4 A. It does not, no.

5 Q. Okay. So two, not counting this one?

6 A. Correct.

7 Q. And were either of those two previous

8 occasions IPRs?

9 A. Not that I recall, no.

10 Q. Were you appearing on behalf of a party who

11 was the plaintiff or the defendant in those two

12 previous occasions?

13 A. On behalf of the plaintiffs, the patent

14 holder.

15 Q. By whom are you presently employed, sir?

16 A. I'm employed by the University of Texas at

17 Austin, College of Pharmacy.

18 Q. And what is your position?

19 A. I am a professor, and I hold the division head

20 position of the Division of Molecular Pharmaceutics

21 and Drug Delivery.

22 Q. What are your duties and responsibilities as

23 division head or head of the division of molecular and

24 pharma --

25 A. Drug.

1 Q. -- molecular drug -- whatever it was.

2 A. Yeah. Molecular Pharmaceuticals and Drug

3 Delivery.

4 Q. Yeah.

5 A. Yes. So my responsibilities as division head

6 include leading a division. We are six faculty now

7 with -- and about to hire a seventh. And so I lead

8 that division. I coordinate with faculty. So it's --

9 it's mainly coordinating, teaching, facilitating

10 research activities amongst the faculty and

11 collaborations.

12 Q. You hold a PhD, sir?

13 A. Yes.

14 Q. And what is your -- what was the subject

15 matter of your PhD dissertation?

16 A. My PhD dissertation was on material science

17 related aspect of drug development, and it was looking

18 at the different physical properties, physical

19 interactions amongst, like a drug substance and

20 excipients in terms of how they behave under -- under

21 pressure and all. So it was related to that, to

22 material science aspect.

23 Q. What is your particular area of expertise in

24 your profession now, sir?

25 A. So my expertise is in drug product design,

1 drug delivery, pharmaceutical technology. Generally
2 speaking, that -- that's what my expertise is in.

3 Q. When you say drug product design, what sort of
4 drugs are we talking about? Prescription drugs?
5 Generic drugs? Can you be a little more specific.

6 A. I mean, it would be any -- any chemical agent
7 that has a therapeutic activity. It could be -- I
8 don't really look at it in terms of whether they're
9 prescription or not, but it would cover both. So it's
10 small, molecular weight drugs. It's large molecule
11 peptides and proteins. It's designing delivery
12 systems for delivering those agents. And those
13 delivery systems include oral drug delivery, include
14 transdermal as well as topical drug delivery, includes
15 injectable like intravenous, intramuscular,
16 subcutaneous. My research also encompasses inhalation
17 and nasal drug delivery, and lastly, ophthalmic drug
18 delivery.

19 Q. Did you review any documents to prepare for
20 your testimony here today?

21 A. Yes.

22 Q. What documents did you review, sir?

23 A. I reviewed my declaration. I reviewed the --
24 and I'm sorry. I don't remember the whole patent
25 number, but it's the 958 patent. I reviewed the

1 documents that I had cited within my declaration. I
2 reviewed the prosecution history, and I think that's
3 it.

4 Q. Okay. When did you review these documents in
5 preparation for giving testimony here today?

6 A. On and off over the last couple of weeks.

7 Q. Do you recall how long you spent in that
8 document review process over the past couple of weeks?

9 A. I don't. It was -- it was a few hours here
10 and there.

11 Q. Okay. Do you record your time for purposes of
12 charging your time?

13 A. Yes.

14 Q. So did you do that for the time that you spent
15 reviewing documents?

16 A. Yes.

17 Q. Does that refresh your recollection as to
18 how -- have you billed for that time you spent yet?

19 A. I have not, no.

20 Q. Okay. Do you -- I recall from your report
21 that your hourly rate that you're charging is \$650 an
22 hour; is that correct?

23 A. Yes.

24 Q. So your time spent preparing, you would charge
25 out at \$650 an hour?

1 A. That's right.

2 Q. Okay. And who do you send your bills to?

3 A. I send -- I was told to send my bills to Fish

4 & Richardson.

5 Q. Okay. Did you meet with anyone to prepare for

6 your testifying here today?

7 A. I did, yes.

8 Q. Who did you meet with?

9 A. Ms. Patel and Mr. Conrad for -- Mr. Conrad was

10 by Zoom.

11 Q. When did that meeting take place? The meeting

12 with Ms. Patel -- I assume Ms. Patel was there a live

13 and in person?

14 A. She was, yes.

15 Q. Okay. So the meeting with Ms. Patel and then

16 Mr. Conrad by Zoom when, did that occur?

17 A. That was yesterday.

18 Q. And about how long did the meeting last?

19 A. About maybe about four and a half hours, five

20 hours.

21 Q. Was Mr. Conrad on the Zoom the entire time?

22 A. No, he was not.

23 Q. Was he on first, in the middle, or at the end

24 of this four and a half hour meeting?

25 A. He was -- I don't know, maybe 75 percent of

1 the way through.

2 Q. I'm sorry. Say for --

3 A. Towards the end. He was towards the end.

4 Q. And about how long was he on the Zoom?

5 A. Maybe 20 or 30 minutes.

6 Q. Where did the meeting take place?

7 A. At the Fish & Richardson offices here in

8 Austin.

9 Q. Was anyone else present other than yourself,
10 Ms. Patel, and then Mr. Conrad via Zoom for about 20
11 to 30 minutes?

12 A. There was not, no.

13 Q. What percentage of your time, your working
14 time do you spend acting as an expert witness in
15 patent matters?

16 A. Percent of time like to --

17 Q. Percent of your, you know, time in your
18 career. I mean, you have responsibilities as a
19 professor and division head, correct?

20 A. Yes.

21 Q. And I assume that's a full-time position?

22 A. Yeah, it is.

23 Q. Okay. So do you spend -- how much of your
24 remaining time do you spend as a -- working as a
25 expert witness?

1 A. I mean, it varies sometimes zero percent to
2 five percent during a week. Really kind of just
3 depends.

4 Q. Okay. Let me ask it a different way. What
5 percentage of your income is derived from the fees
6 that you receive for acting as an expert witness in
7 compared to your compensation as a professor and
8 division head?

9 A. I -- I don't know. I've never actually
10 calculated.

11 Q. Is it more than half?

12 A. It might be.

13 Q. Is it more than 75 percent?

14 A. I mean, it might be in a year and the next
15 year may be much lower. It really just depends on the
16 particular time.

17 Q. Has your compensation that you received for
18 acting as an expert witness in a given year exceeded
19 your compensation as a professor and division head at
20 the University Of Texas, Austin?

21 A. It has, yes.

22 Q. How long have you been acting or working as an
23 expert witness?

24 A. Since about -- well, not always as an expert
25 witness, but consulting on matters like this since

1 around 1995, 1996.

2 Q. And when were you awarded your PhD, sir?

3 A. In 1986.

4 Q. You testified that you had worked previously
5 or done work previously with Fish & Richardson. Do
6 you recall that?

7 A. Yes.

8 Q. In those two prior cases, who did you work
9 with? Who is your contact person at Fish?

10 A. In both instances it was Elizabeth Flanagan in
11 their Delaware office.

12 Q. Professor Williams, I'm going to hand you a
13 document that I have. Sorry. Nice catch. Going to
14 hand you a document that I have marked as Deposition
15 Exhibit 17.

16 (Defendant's Exhibit 17 was marked for
17 identification.)

18 THE WITNESS: Thank you.

19 BY MR. ANDERSON:

20 Q. In the first page is headed in the middle
21 declaration of Dr. Robert O. Bill Williams, III PhD,
22 and it is numbered consecutively. It looks like 100
23 and -- from Page 1 to Page 132.

24 Please take a moment to look at Exhibit 17 and
25 tell me whether you recognize it, sir.

1 A. Yes, I recognize it.

2 Q. And is Exhibit 17 a copy of your declaration
3 filed in this proceeding and dated March 15, 2023?

4 A. Yes.

5 Q. Is that your signature on the first page?

6 Either a -- what you call a wet signature or an
7 electronic signature?

8 A. Yes. It's an electronic signature of my own
9 signature.

10 Q. All right. And did you, in fact,
11 electronically sign this declaration on or about March
12 15, 2023?

13 A. I signed it on March 15th.

14 Q. Prior to signing it, sir, did you review this
15 report carefully?

16 A. Yes.

17 Q. And at the time that you signed it, did you
18 believe that everything in the report was true and
19 correct and accurate?

20 A. I did.

21 Q. And you reviewed this declaration since
22 signing it on March 15, 2023, correct?

23 A. Yes.

24 Q. And in fact you reviewed it in connection with
25 your preparation for giving testimony here today,

1 correct?

2 A. Yes.

3 Q. And based on your review as you sit here

4 today, is everything in your declaration still true

5 and correct and accurate?

6 A. It is. I found one typo.

7 Q. All right. What typo did you find, sir?

8 A. So it's Page 36, Paragraph 99.

9 Q. Yes.

10 A. I have -- so it's in the one, two -- the

11 seventh line down. The very first number is 2016. It

12 should be 2006.

13 Q. Other than the typo in Paragraph 99, are there

14 any other changes or corrections or amendments as you

15 sit here today that you wish to make?

16 A. Not that I'm aware of, no.

17 Q. All right. So based on your subsequent review

18 of Exhibit 17 after you signed it as you sit here

19 today and other than the typo that you just pointed

20 out, everything in your declaration is true and

21 correct and accurate?

22 A. Yes.

23 Q. All right. Could you describe for me

24 generally how you went about preparing Exhibit 17 and

25 reaching the opinions that you state in that document?

1 A. Yes. So I was provided what the purpose of my
2 testimony would be. I was given that or asked that.
3 And I was provided the prior references that I then
4 reviewed with my -- what I was asked to do in mind.
5 And then based on that, I -- you know, the -- this
6 report manifest my opinions regarding what I was asked
7 to do.

8 Q. When were you first, if you will, given this
9 assignment?

10 A. I don't remember.

11 Q. Well, your report is dated March 15th of 2023.
12 Approximately how long in advance of that date did you
13 start work on this project?

14 A. I don't remember when I was contacted. I'd
15 have to look.

16 Q. Okay. You could look at your billing records?

17 A. No. I signed an engagement letter from Fish &
18 Richardson.

19 Q. Do you recall whether you signed the
20 engagement letter in 2023?

21 A. I really -- I don't remember.

22 Q. So you don't recall whether you signed an
23 engagement letter for this matter five years ago?

24 A. It wasn't five years ago.

25 Q. All right. But can you narrow it down at all

1 to a 12 month period?

2 A. No, I can't.

3 Q. Okay. You said that you were provided the
4 purpose of your testimony, correct?

5 A. Yes.

6 Q. Who provided that to you?

7 A. That was counsel from Fish.

8 Q. Okay. Who specifically?

9 A. That was Ms. Patel and Mr. Conrad.

10 Q. How did they provide you the purpose of your
11 testimony? Verbally or in person? In writing?

12 A. It was verbally. It was not in person. It
13 was over Zoom or some -- some other method. I can't
14 remember what format it was, but it was virtual.

15 Q. What did they tell you the purpose of your
16 testimony was?

17 A. So in Paragraph 1, I state there in the middle
18 it says specifically, I've been asked to review the
19 foregoing claims of the 958 patent. Quote the
20 challenge claims in view of the prior art references
21 and the understanding of a person of ordinary skill in
22 the art as it relates to the -- to the 958 patent. So
23 that's what I was asked to do.

24 Q. Were you told what the purpose was of
25 reviewing the foregoing claims of the 958 patent in

1 view of the prior art references was?

2 A. So in Paragraph 15 I state that counsel from
3 Fish & Richardson informed me that I should consider
4 these materials, which I was referring to the prior
5 art references that are listed in Paragraph 13 that I
6 was supplied or that I was given; that I should view
7 those through the lens of a POSA relating to the 958
8 patent, which I've done.

9 And counsel informed me that I should use
10 September 14, 2006 as the earliest priority date for
11 my opinions -- or those priority date of the 958
12 patent, which I did. So and then I -- I understood my
13 what -- what I was asked was to determine if the
14 methods and compositions that are described claimed in
15 the 958 patent were described in the prior references
16 that I was asked to review.

17 Q. Were you told that the purpose of your
18 testimony was to determine the validity of the claims
19 based on the prior art references?

20 A. Well, I understood that because I did an
21 obviousness analysis that that's in my report.

22 Q. Were you told to do an obviousness analysis as
23 described in your report?

24 A. Yes.

25 Q. Were you told to do any other sorts of

1 analysis other than the obviousness analysis?

2 A. I mean, I believe that's what my -- that's my
3 understanding of what I was asked to do.

4 Q. So just so I'm clear, then, sir, Ms. Patel and
5 Mr. Conrad told you to review the prior art references
6 that they provided to you and to determine the cl
7 whether they determine the obviousness of the claims
8 that they identified for you from the 958 patent.

9 A. I mean, generally that was my understanding of
10 what I was asked to do. Okay.

11 Q. And you said that they provide did you get
12 this assignment at this 1, if you will, conference or
13 som or was this farther down the way that you were
14 given the specific assignment?

15 A. Well, I mean, when I was contacted and said
16 that I could do this, and I don't recall exactly what
17 the sequence was, but it generally -- I -- I had the
18 understanding early and probably the first call it was
19 to discuss what I was being asked to do.

20 Q. Did you make any notes of your conversation
21 during this first call?

22 A. No.

23 Q. Did you make any notes of any conversations
24 that you've had with Ms. Patel or counsel from Fish &
25 Richardson relating to relating to your work in this

1 matter?

2 A. I haven't, no.

3 Q. You said that they provided the prior art

4 references to you, correct?

5 A. Yes.

6 Q. So you did not do your own research or search

7 for prior art, correct?

8 A. I did not.

9 Q. Okay. And since you've referenced Paragraph

10 15 on Page 8 of your report, you can go there. There

11 is a chart. Do you see that, sir? It's says --

12 A. Yes.

13 Q. -- headed prior art references. Do you see

14 that?

15 A. Yes.

16 Q. Are tho those are the prior art references

17 that counsel for -- that counsel provided to you; is

18 that correct?

19 A. Yes. Except I think yeah, MO -- 100 MOM-1007.

20 Harder translation. I think -- I think that's the

21 Sherman one. Anyway. I looked at MOM -- yes, I

22 looked at these prior art references that were

23 provided to me that are in Paragraph 13.

24 Q. Okay. So counsel for MOM from Fish &

25 Richardson provided you with these one, two, three,

1 four, five references to review in connection with
2 your work in this matter, correct?

3 A. Yes.

4 Q. Did you do any independent research or prior
5 art searching in connection with your work in this
6 matter?

7 A. I -- I didn't, no.

8 Q. Did not?

9 A. Did not.

10 Q. Okay. How were you provided these five prior
11 art references by MOM's counsel? Did they send them
12 to you by e-mail or by mail or --

13 A. I was sent -- they were sent to me by e-mail.

14 Q. As PDFs?

15 A. I believe so, yes.

16 Q. By the way, have you had e-mail communications
17 with counsel for MOM in connection with your -- the
18 preparation of your declaration?

19 A. Yes.

20 Q. When you were first contacted by Ms. Patel and
21 Mr. Conrad, were you told when they needed your report
22 by, when it needed to be completed?

23 A. I don't recall specifically them telling me
24 that. I would have asked just general timeline to
25 make sure that I had time to do it, but I don't -- I

1 don't remember specifically. But I know I would have
2 asked that.

3 Q. Do you recall whether you were given, you
4 know, two weeks to do it or four weeks or anything
5 like that? Can you give an approximation?

6 A. I mean, it was -- it was probably about a
7 month to work on it, as I recall.

8 Q. Well, you referenced the Sherman translation
9 document, MOM 1007, and I will tell you it's dated
10 February 28 of 2023.

11 A. Okay.

12 Q. So would it be fair to say, given the date of
13 that translation, the first item on your prior art
14 references, that you were not given the assignment
15 prior to February 28 of 2023?

16 MS. PATEL: Objection. Form.

17 THE WITNESS: Again, I don't remember when I
18 signed the engagement letter and when we had
19 conversations, but I -- I think it was about a, you
20 know, three or four weeks before March 15th that I was
21 informed that there was a due date. That's what I
22 recall.

23 BY MR. ANDERSON:

24 Q. Well, given that the first prior art reference
25 that you cite here as a Harder or MOM-1007 is dated

1 February 28th of 2023, you could not have had that
2 translation to start your work prior to that date,
3 could you, sir?

4 MS. PATEL: Objection. Foundation. Form.

5 THE WITNESS: I -- I just -- I mean, I
6 remember starting three or four weeks ahead of the
7 March 15th. So I don't remember when I got the
8 MOM-1007 exactly, but it would have been obviously
9 after the date that was signed.

10 BY MR. ANDERSON:

11 Q. Well, do you recall starting your work before
12 you even received the prior art references?

13 MS. PATEL: Objection. Foundation. Form.

14 THE WITNESS: Well, I -- I would have reviewed
15 what was provided to me when I got them. I don't -- I
16 don't exactly remember when they were sent to me.

17 BY MR. ANDERSON:

18 Q. Well, the second reference that you list here
19 as Wolf or MOM-1009, do you see that?

20 A. Yes.

21 Q. That's dated March 1st of 2023.

22 A. Okay.

23 Q. Okay. So you could not have reached your
24 conclusions or opinions in this matter prior to have
25 having in your possession MOM-1007 and MOM-1009,

1 correct?

2 A. That's --

3 MS. PATEL: Objection. Foundation. Form.

4 THE WITNESS: That's true.

5 BY MR. ANDERSON:

6 Q. So you could not have done the preparation or
7 your analysis to reach your opinions until at the
8 earliest starting on March 1st of 2023 when you
9 received the -- when the Wolf or MOM-1009 translation
10 was completed, correct?

11 MS. PATEL: Objection. Foundation. Form.

12 THE WITNESS: I mean, I would have reviewed it
13 when I received it, yes. But it would have been -- it
14 couldn't have been before it was actually signed,
15 either the February date or March 1 date for the Wolf
16 translation.

17 BY MR. ANDERSON:

18 Q. So the preparation of your opinions was
19 conducted in about two weeks between March 1st of 2023
20 and March 15th, the date of your signature, correct?

21 MS. PATEL: Objection. Foundation. Form.

22 THE WITNESS: Well, I -- again, I don't
23 remember exactly the date that I was given or sent
24 each of the prior art references. But when I got
25 them -- and then I was informed when a report would be

1 due, I began working on, you know, reviewing the
2 documents and the prosecution history and the 958
3 patent. And I recall doing that more than two weeks
4 prior to March 15th.

5 BY MR. ANDERSON:

6 Q. Okay. But the prior art references on which
7 you base your opinions, you did not have both of them
8 in your possession until at the earliest March 1st of
9 2023, given the date on MOM-1009; isn't that correct,
10 sir?

11 MS. PATEL: Objection. Foundation. Form.

12 THE WITNESS: I mean, again, I don't remember
13 exactly when I got them, but I had them and considered
14 them as part of my opinion, you know, when I wrote my
15 declaration and signed it on March 15th.

16 BY MR. ANDERSON:

17 Q. I understand that you had them and considered
18 them. I'm trying to determine the earliest that you
19 could have started your analysis, and that earliest
20 date would be on or after March 1st of 2023 because
21 the Wolf reference translation is dated March 1st of
22 2023, correct?

23 MS. PATEL: Objection. Foundation. Form.

24 THE WITNESS: Well, the harder reference would
25 have been after I received it. And if it's dated, I

1 think you said February 23 --

2 MS. PATEL: 28th.

3 THE WITNESS: Sorry. February 28, 2023 and

4 Wolf, March 1, 2023, I would have considered them

5 after they were dated and after I received them.

6 BY MR. ANDERSON:

7 Q. Okay. So sometime between March 1st of 2023

8 and your execution of this declaration on March 15th

9 of 2023, correct?

10 MS. PATEL: Objection. Foundation. Form.

11 THE WITNESS: Well, March 1st for Wolf and

12 February 28th for Harder translation.

13 BY MR. ANDERSON:

14 Q. Between those dates and March 15th of 2023?

15 MS. PATEL: Objection. Foundation.

16 BY MR. ANDERSON:

17 Q. Correct?

18 MR. ANDERSON: Same objections.

19 THE WITNESS: Sorry. So between the dates

20 that Harder translation and Wolf translation were

21 signed and I received them, I would have considered or

22 I did consider them in preparing my declaration that I

23 signed on March 15th.

24 BY MR. ANDERSON:

25 Q. Okay. Do you recall how much you invoiced

1 Fish & Richardson for the preparation of your
2 declaration, which is Exhibit 17?

3 A. I don't sitting here.

4 Q. Was it more than \$5,000?

5 A. Probably.

6 Q. Was it more than \$10,000?

7 A. I actually -- I just don't remember.

8 Q. Okay. Somewhere between 5 and \$10,000 --

9 MS. PATEL: Objection.

10 BY MR. ANDERSON:

11 Q. Your best estimate as you sit here today?

12 MS. PATEL: Objection. Foundation.

13 THE WITNESS: Yeah. I don't remember.

14 BY MR. ANDERSON:

15 Q. Do you remember how many hours you spent on
16 preparing Exhibit 17, approximately?

17 A. I don't, no.

18 Q. Do you recall how many conferences you had
19 with the attorneys from Fish & Richardson as you were
20 preparing Exhibit 17?

21 A. I don't, no.

22 Q. Was it more than the first initial meeting
23 where you were provided the purpose of your testimony?

24 A. Yes.

25 Q. Do you recall whether it was -- been more than

1 five?

2 A. I just don't recall. I don't remember.

3 Q. Did you provide any drafts of your declaration
4 to counsel for Fish & Richardson?

5 A. There would have been drafts, yes.

6 Q. Do you recall how many?

7 A. No.

8 Q. You. Where did you provide these as what I'll
9 call PDF attachments?

10 A. No.

11 Q. How did you provide them to Fish & Richardson?

12 A. As marked up Word documents.

13 Q. Were you provided a draft Word document by
14 Fish & Richardson as the starting point?

15 A. I had conversations with -- as I recall, with
16 Fish & Richardson about prior references, basically
17 coming up with my declaration. And then that was --
18 that first draft was provided by Fish based on my
19 opinions and discussions.

20 Q. Okay. So you had some discussions or
21 conversations with lawyers at Fish & Richardson
22 regarding the prior art references; is that correct?

23 A. Yes. So it was more me telling -- as I
24 recall, me telling them what my thoughts were about
25 the prior references.

1 Q. And then they provided you with a draft, a
2 first draft of your report, correct?

3 A. Yes. I was provided a first draft of my
4 report based on conversations I had, opinions that I
5 expressed.

6 Q. And then you provided a marked up draft back
7 to Fish & Richardson, correct?

8 A. I reviewed it and yes.

9 Q. Do you still have copies of those marked up --
10 of those revisions that you made?

11 A. I do not, no.

12 Q. What happened to them?

13 A. I don't keep -- I don't keep documents.

14 Q. So were these draft -- was the first draft
15 provided to you by Fish & Richardson by e-mail as a
16 PDF attachment or a Word attachment?

17 A. Yes.

18 Q. As a Word attachment?

19 A. It was.

20 Q. Okay. And then you used track changes to make
21 changes. And then you sent that attachment by e-mail
22 back to MOM's counsel, correct?

23 A. I sent it back to Fish.

24 Q. Yes. That's MOM's counsel. Okay. Do you
25 understand that?

1 A. Well, I don't know if they have more than one
2 counsel. So I want to be clear, I was with Fish &
3 Richardson.

4 Q. Okay. So that's the only counsel you've
5 worked with?

6 A. The only counsel I know about.

7 Q. Okay.

8 A. I don't -- but I -- I don't --

9 Q. All right.

10 A. -- really know.

11 Q. And after you sent the e-mail with the markup
12 version back to Fish, did you delete the e-mail?

13 A. I do. I don't keep the e-mails or the
14 documents.

15 Q. Is this a practice that you follow throughout
16 your work both as a professor and division head and as
17 an expert witness?

18 MS. PATEL: Objection. Scope. Relevance.

19 THE WITNESS: But, I mean, I don't keep drafts
20 of documents that I work on from consulting like this
21 because I -- I just don't as a practice.

22 BY MR. ANDERSON:

23 Q. Okay.

24 A. I never have.

25 Q. So how long after you hit send on the e-mail

1 sending the marked up draft back to Fish did you then
2 hit the delete button?

3 MS. PATEL: Objection. Scope, relevance, and
4 foundation.

5 THE WITNESS: I -- I would not have done it
6 until I had talked to Fish to explain what my thoughts
7 were about the -- whatever revisions I would have
8 made.

9 BY MR. ANDERSON:

10 Q. Okay. So after you sent the marked up draft,
11 you then had another conversation with the attorneys
12 at Fish, correct?

13 A. I would have, yes.

14 Q. And then after you had that conversation to
15 explain your revisions, you then would delete the
16 e-mail that you had sent; is that correct?

17 MS. PATEL: Objection. Foundation, relevance,
18 scope.

19 THE WITNESS: Well, the e-mail -- sorry. The
20 e-mail, I probably still have that. I don't have -- I
21 delete the document that once I -- I don't need it or
22 don't use it anymore.

23 BY MR. ANDERSON:

24 Q. Okay. So do you have the e-mail where you
25 sent the marked up draft back to Fish?

1 A. Probably.

2 Q. Okay. So if we wanted to see the progression
3 of the development of your report and the changes made
4 from the time that Fish provided you the first draft
5 until the final version that you signed, we could get
6 that by -- from your e-mails.

7 Is that a correct statement, sir?

8 MS. PATEL: Objection. Foundation.

9 THE WITNESS: I -- you may could. I have
10 never tried to do it, but you -- that -- if it's
11 there, you would be able to. I'd be able to find it
12 for you.

13 BY MR. ANDERSON:

14 Q. Okay. But you don't -- you don't have a
15 practice of, like, deleting e-mails in your sent
16 folder within, you know, after you send it, correct?

17 A. I don't.

18 Q. Okay. How many iterations, approximately, do
19 you recall going through of your draft?

20 A. I don't remember.

21 Q. So do you recall whether it was more than
22 five?

23 A. I -- I really don't remember.

24 Q. Do you recall if it was more than 10?

25 MS. PATEL: Objection. Foundation.

1 THE WITNESS: No.

2 BY MR. ANDERSON:

3 Q. Do you recall that between March 1st and March
4 15th that there was -- you had a number of back and
5 forth of drafts with counsel for Fish?

6 A. I did have back and forth with drafts with
7 counsel at Fish. I just don't remember how many back
8 and forth.

9 Q. Did when you -- in each occasion, did you send
10 back here's a track chain -- track version with my
11 further revisions until you got to the end?

12 A. That's what I would have done, yes.

13 Q. And that's what you recall doing, correct?

14 A. I do, yes.

15 Q. When you sent back a marked up version, would
16 you -- would the next iteration that you received from
17 Fish contain not only your revisions, but also
18 revisions that Fish had done?

19 MS. PATEL: Objection. Foundation.

20 BY MR. ANDERSON:

21 Q. Do you understand my question, sir?

22 A. Yes.

23 Q. Okay.

24 A. All right. They may have. I don't recall.

25 Q. Well, if you went through multiple iterations,

1 isn't it true that Fish had to be making changes on
2 its own for you -- for your further review?

3 MS. PATEL: Objection. Foundation. Form.

4 THE WITNESS: Well, I mean, I review it,
5 whatever it -- coming up with the final -- my final
6 opinion in the declaration. I would review and, you
7 know, reword or to help clarify what my opinion is.
8 I -- I just don't remember what counsel, if they made
9 any -- I don't really remember.

10 BY MR. ANDERSON:

11 Q. What did you receive back after you sent some
12 track changes? Did you receive back a clean copy or
13 was it a copy that had additional track changes from
14 Fish?

15 MS. PATEL: Objection. Foundation.

16 THE WITNESS: It probably had additional
17 changes that I reviewed.

18 THE REPORTER: I think they're working on the
19 electric in this part.

20 MR. ANDERSON: Hold on a second.

21 THE REPORTER: But I'm still on the record.
22 We can also go off, but I'm having no technical
23 issues.

24 MS. PATEL: I'm fine if the witness is fine.

25 THE WITNESS: I'm good.

1 MR. ANDERSON: Okay. That's weird.

2 BY MR. ANDERSON:

3 Q. Do you recall receiving the first draft of
4 your report from Fish & Richardson before you had
5 received the five prior art references listed on Page
6 8 of your report.

7 MS. PATEL: Objection. Foundation.

8 THE WITNESS: I don't recall that, no.

9 BY MR. ANDERSON:

10 Q. Just don't recall one way or the other, sir?

11 A. No, I don't. I don't think that I received a
12 draft because the draft would've come after I looked
13 at the prior art references. So case that's in our
14 discussion, I was discussing my opinions on the -- on
15 the references themselves. So --

16 Q. Okay. Could you turn to Page 9 of your
17 report, sir, Exhibit 17, and there's a chart there
18 that says list has one column headed claims and the
19 other one basis for rejection.

20 Do you see that?

21 A. Yes.

22 Q. And that was prepared by Fish & Richardson,
23 correct?

24 A. That -- that was, yes.

25 Q. By the way, we've been talking about your back

1 and forth with Fish & Richardson. Who specifically at
2 Fish & Richardson did you work with on the preparation
3 of your report, Exhibit 17, after you had the initial
4 I'll call assignment conference with Ms. Patel and Mr.
5 Conrad?

6 A. I worked with Ms. Patel and Mr. Conrad.

7 Q. Do you know whether or did your subsequent
8 conversations after that first one where you're going
9 over changes, you know, and revisions to your report
10 as initially prepared by Fish, did Mr. Conrad
11 participate in each of those conversations?

12 MS. PATEL: Objection. Form.

13 THE WITNESS: I don't remember if he
14 participated in every one. He was on some of them
15 for -- but I -- I don't remember if it was every one.

16 BY MR. ANDERSON:

17 Q. The prior art references listed on Page 8 that
18 you were provided by Fish & Richardson, were there any
19 others that you -- that were provided to you by Fish &
20 Richardson that you considered in your report and then
21 rejected?

22 A. I mean, everything I considered that I was
23 provided is in Exhibit C. And yeah, I'm not sure what
24 you mean by rejected, but I -- these are what I
25 considered.

1 Q. Well, Exhibit C lists a whole bunch of items.
2 I haven't counted it up, but there's more than the
3 five prior art references. And you did not use all --
4 use all or consider any -- consider all of these as
5 prior art references in your work, correct?

6 A. That's true. I did not.

7 Q. Because I mean, some of them is not -- are not
8 prior art because of their date, right?

9 A. Yes.

10 Q. Okay. So what it was -- who selected these
11 items in Exhibit C? Was that counsel for MOM as well?

12 A. I mean, I was provided these. I'm not sure
13 who actually selected them.

14 Q. All right. I guess that's a better way of
15 putting my question is the items in Exhibit C, those
16 were all provided to you by counsel for Fish or
17 counsel for MOM, correct?

18 MS. PATEL: Objection. Foundation. Form.

19 THE WITNESS: That's true. I was provided
20 these.

21 BY MR. ANDERSON:

22 Q. Yeah. Again, you did not do any research or
23 investigation on your own with regard to your report,
24 correct?

25 A. I didn't look for independent references if

1 that's what you mean.

2 Q. Sure. Well, for example, on Page 132, the
3 last page, the second to last item is a convention on
4 the elaboration of a European Pharmacopeia, August 5,
5 1974. Do you see that?

6 A. Yes.

7 Q. That was given to you by counsel for Fish,
8 correct?

9 A. Yes.

10 Q. You didn't go out and research it and find it
11 on your own?

12 A. I did not.

13 Q. Okay. I apologize. I may have asked this.
14 Did you work with anyone other than Ms. Patel and Mr.
15 Conrad in connection with the preparation of your
16 declaration, Exhibit 17, sir?

17 A. No, I did not that I recall.

18 Q. Now, your declaration relating to the 958
19 patent, this is not the first time you've prepared a
20 declaration on the 958 patent, correct?

21 A. That's true.

22 Q. You previously prepared a declaration relating
23 to the alleged validity of the 958 patent -- 958
24 patent back in 2017, correct?

25 A. Yes.

1 Q. And that was also for Fish & Richardson,
2 correct?

3 A. Yes.

4 Q. But for a different entity as the client,
5 correct?

6 A. That's what I recall.

7 MS. PATEL: Alan, can we take a break, please?

8 MR. ANDERSON: Sure. We'll take about a
9 10-minute break.

10 THE REPORTER: All right. We're going off the
11 record. The time is 10:01 a.m., Central Standard
12 Time.

13 (A recess was taken.)

14 THE REPORTER: We are back on the record. The
15 time is 10:13, Central Standard Time.

16 Counsel, you may continue.

17 MR. ANDERSON: Thank you.

18 BY MR. ANDERSON:

19 Q. Dr. Williams, you understand that you're still
20 under oath?

21 A. I do.

22 Q. And during the break, did you consult with
23 counsel concerning any of your testimony earlier
24 today?

25 A. No.

1 MR. ANDERSON: I'm going to hand you what I
2 have marked as Exhibit 18.

3 (Defendant's Exhibit 18 was marked for
4 identification.)

5 MS. PATEL: Thank you.

6 BY MR. ANDERSON:

7 Q. This is a document headed declaration of
8 Robert O. Bill Williams, III PhD In Support of
9 Defendant's Opposition to Plaintiff's Renewed Motion
10 for Preliminary Injunction, and it appears to be dated
11 April 28, 2017.

12 Please take a moment to look at Exhibit 18 and
13 tell me whether you recognize it, sir.

14 A. Yeah. It's my signature.

15 Q. That is your signature as it appears on Page
16 12 of the document?

17 A. Yes.

18 Q. And is that your wet signature or an
19 electronic one?

20 A. That looks like a actual wet signature.

21 Q. All right. Do you recall preparing or do you
22 recall signing Exhibit 18 on or about April 28, 2017?

23 A. Actually, I don't.

24 Q. Okay. Do you recall preparing a declaration
25 in connection with a different lawsuit involving the

1 Vieths and a different defendant other than MOM, but
2 where the defendant was also represented by Fish &
3 Richardson?

4 A. I recall that I had worked on a similar matter
5 a while back, yes.

6 Q. Did you review a copy of Exhibit 18 in
7 connection with the preparation of your declaration in
8 this case, Exhibit 17?

9 A. No, sir.

10 MS. PATEL: Objection.

11 THE WITNESS: Sorry.

12 MS. PATEL: Privilege. I'm going to instruct
13 the witness not to answer that question.

14 MR. ANDERSON: Whether he reviewed it is
15 privileged?

16 MS. PATEL: Yes.

17 MR. ANDERSON: How is that involve the giving
18 or receiving of legal advice, Counsel?

19 MS. PATEL: It's (indiscernible) in what he
20 has done to prepare his declaration.

21 MR. ANDERSON: Okay. So I guess we'll have to
22 take that up. So you're instruct -- are you going to
23 instruct the witness not to answer any questions with
24 regard to his prior declaration that he signed in
25 2017?

1 MS. PATEL: That's not what I said. It
2 depends on what the question is.

3 BY MR. ANDERSON:

4 Q. All right. I just want to make sure that this
5 is crystal clear on the record, sir, for purposes of
6 getting a ruling on it.

7 Did you review Exhibit 18, your declaration
8 from 2017 on the same patent, the 958 patent, also
9 involving invalidity in connection with the -- in
10 connection with your work related to Exhibit 17?

11 MS. PATEL: I object to you privileged work
12 product and instruct the witness not to answer the
13 question.

14 BY MR. ANDERSON:

15 Q. And are you going to abide by your counsel's
16 instruction?

17 A. I am.

18 Q. In your declaration that's Exhibit 18, you
19 state your hourly rate is \$650 per hour plus expenses.
20 It's in Paragraph 4 on Page 2.

21 Do you see that?

22 A. Yes.

23 Q. And that's the same hourly rate that you list
24 in Exhibit 17, correct?

25 A. It is, yes.

1 Q. So you have not changed your hourly rate in
2 the past six years; is that correct?

3 A. That --

4 MS. PATEL: Objection. Relevance.

5 THE WITNESS: That is true. I have not.

6 BY MR. ANDERSON:

7 Q. With regard to Exhibit 18, who prepared the
8 first draft of that document?

9 MS. PATEL: Objection. Privileged. Instruct
10 the witness not to answer that question.

11 BY MR. ANDERSON:

12 Q. Are you going to abide by your counsel's
13 instruction?

14 A. Yes.

15 Q. With regard to Exhibit 18, do you -- strike
16 that.

17 Do you know whether portions of Exhibit 18
18 were copied into your report, which is Exhibit 17?

19 MS. PATEL: Objection. Foundation?

20 THE WITNESS: I don't know.

21 BY MR. ANDERSON:

22 Q. Would it surprise you to know that there are
23 portions of Exhibit 18 that are copied word for word
24 into Exhibit 17?

25 MS. PATEL: Objection. Foundation.

1 THE WITNESS: I just didn't know if it was or
2 not, honestly.

3 BY MR. ANDERSON:

4 Q. Well, for example, sir, if you'd look at
5 Paragraph 1 on exhibit -- excuse me, Exhibit 18, and
6 compare that to Paragraph 6 on Page 5 of Exhibit 17,
7 it appears to me from my reading that Paragraph 6 is
8 word for word identical to Paragraph 1 on Exhibit 18
9 down to Line 8 that ends on page -- on Exhibit 18 with
10 the word (indiscernible)?

11 MS. PATEL: Was there a question?

12 BY MR. ANDERSON:

13 Q. Do you see that, sir?

14 A. I see Paragraph 6 in Exhibit 17 and Paragraph
15 1 of Exhibit 18.

16 Q. Okay. Could you take a moment to compare to
17 yourself what's in Paragraph 6 of Exhibit 17 and tell
18 me whether you agree that it is identical to the first
19 seven plus lines in Paragraph 1 of Exhibit 18?

20 A. I mean, it looks to be.

21 Q. Okay.

22 A. Yes.

23 Q. And then would you agree that Paragraph 7 in
24 Exhibit 17 is identical to the next three sentences in
25 Paragraph 1 of Exhibit 18?

1 A. Appears to be, yes.

2 Q. Do you know whether counsel for Fish &
3 Richardson in preparing the first draft of your
4 report, Exhibit 17, copied various portions of Exhibit
5 18?

6 MS. PATEL: Objection. Privileged. I'm going
7 to instruct the witness not to answer that question.

8 BY MR. ANDERSON:

9 Q. Are you going to abide by your counsel's
10 instruction, sir?

11 A. Yes.

12 Q. Do you recall that in Exhibit 18 you reached
13 different opinions regarding combinations of prior art
14 references relating to the validity of the 958 patent
15 than those opinions expressed in Exhibit 17?

16 A. I don't recall that.

17 Q. Would it surprise you that the opinions that
18 you expressed in Exhibit 17 are different from the
19 opinions you expressed in Exhibit 18?

20 MS. PATEL: Objection. Foundation.
21 Relevance.

22 THE WITNESS: Well, I haven't reviewed this
23 Exhibit 18, so I don't really recall what my purpose
24 was in Exhibit 18 and what I was asked to do. So I
25 just hadn't looked at it in this matter.

1 BY MR. ANDERSON:

2 Q. Was exhibit -- do you recall whether Exhibit
3 18 was prepared in the first case by counsel, Fish &
4 Richardson back in 2017 as it was -- as occurred here?

5 MS. PATEL: Objection. Foundation.
6 Privileged. Instruct the witness not to answer that
7 question to the extent if it was communication with
8 counsel.

9 BY MR. ANDERSON:

10 Q. Going to abide by your counsel's instruction?

11 A. Wait. So are you saying don't answer if it
12 involves privileged communication? What is the --
13 what is your --

14 MS. PATEL: Alan, can you repeat the question.

15 MR. ANDERSON: Sorry. I will.

16 THE REPORTER: Yeah, I'll play it back.

17 MR. ANDERSON: Could you read the question
18 back, please?

19 THE REPORTER: Yeah. Give me one second to
20 queue that up.

21 MR. ANDERSON: Thank you.

22 THE REPORTER: I'm having a little glitch.
23 Sorry. Okay. Here we go. Let me play it out loud
24 for you.

25 MR. ANDERSON: No. Let me just see it.

1 (The requested question was read back.)

2 MR. ANDERSON: I'll ask that question again

3 because now I can see what the question was.

4 BY MR. ANDERSON:

5 Q. Was Exhibit 18 prepared in the first instance

6 by Fish & Richardson has occurred with regard to

7 Exhibit 17?

8 MS. PATEL: Object to privilege and instruct

9 the witness not to answer that question.

10 THE WITNESS: At all?

11 MS. PATEL: At all.

12 BY MR. ANDERSON:

13 Q. Okay. And you're going to abide by your

14 counsel's instruction, sir?

15 A. Yes.

16 Q. Between the time that you signed Exhibit 18 on

17 or about April 27th of 2017 and signing or -- and

18 being -- starting your work on Exhibit 17, you didn't

19 do any further -- any research or analysis of the 958

20 patent during those intervening six years, did you,

21 sir?

22 MS. PATEL: Can I hear the question again?

23 Sorry. Do we have a realtime link?

24 THE REPORTER: Yeah, I can play it back.

25 MS. PATEL: Do we have a realtime link?

1 THE REPORTER: Oh, for you all?

2 MS. PATEL: Yeah.

3 THE REPORTER: No, no. You want me to play
4 back?

5 MS. PATEL: Yes, please.

6 THE REPORTER: Give me one second.

7 (The requested question was played back.)

8 MS. PATEL: Okay. I'm going to object to that
9 being privileged. Instruct the witness not to answer
10 the question.

11 BY MR. ANDERSON:

12 Q. Are you going to abide by your counsel's
13 instruction?

14 A. Yes.

15 MR. ANDERSON: Counsel, let me just ask to see
16 if we can short circuit a little bit. Would you
17 instruct the witness not to answer if I asked him a
18 series of questions directed toward differences
19 between what he stated in Exhibit 18 and what he
20 states in Exhibit 17?

21 MS. PATEL: Likely, yes.

22 MR. ANDERSON: I just don't -- I mean, I
23 understand your position you're taking. I just don't
24 want to, I mean, spend the time to ask a whole bunch
25 of questions and have the same instructions. So

1 that's if you are saying if I, for example, said in
2 Exhibit 18, you said this based on this in Exhibit 17,
3 you say the difference, why is that, you'd say --
4 instruct him not to answer?

5 MS. PATEL: Right.

6 MR. ANDERSON: Okay. I hope that's clear for
7 the record. And I hope you understand I just want to
8 try to speed things up. So we're agreeable on that?

9 MS. PATEL: Yes, we are.

10 MR. ANDERSON: All right. Thank you. So then
11 just for the record so it's clear, you would instruct
12 the witness not to answer questions directed toward
13 the differences between his conclusions and opinions
14 stated in Exhibit 17 and those stated in Exhibit 18,
15 correct?

16 MS. PATEL: Yes.

17 MR. ANDERSON: Thank you.

18 MS. PATEL: In addition to these also because
19 of relevance and scope.

20 MR. ANDERSON: Sure. But you would instruct
21 him not to answer?

22 MS. PATEL: Correct.

23 MR. ANDERSON: Yeah. Okay.

24 BY MR. ANDERSON:

25 Q. I'd like to go back to Exhibit 17, sir, your

1 report in this matter. And in Paragraph 3, which
2 continue starts at the bottom of Page 4 and continues
3 to the top of Page 5, you have a description of your
4 own knowledge and experience and your work experience.
5 Do you see that, sir, starting at the bottom of Page
6 4?

7 A. Yes.

8 Q. And then continuing on to the top of Page 5,
9 there's a clause that says quote which includes
10 formula rating compositions of and delivering medicine
11 and supplements to humans.

12 Do you see that?

13 A. Yes.

14 Q. Does your experience formulating compositions
15 of and delivering medicine and supplements to humans
16 include specifically delivering medicine and
17 supplements to infants under the age of one?

18 A. So I have experience working developing
19 formulations and delivery devices for infants, but I
20 would have to check the label if it was for children
21 less than one. I think it was, but it was definitely
22 for young children above the age of one -- of one or
23 when they're eating food, because this was a product
24 that could be added, like, to applesauce and as an
25 antibiotic. Okay. So I just can't remember if it was

1 approved for children less than one.

2 Q. Okay. So with regard to what you have worked
3 on relating to young children, your recollection is
4 that it was an additive to food to be then fed to
5 an -- a young child, correct?

6 A. That's one example of what I've worked on,
7 yes.

8 Q. Okay. You don't recall, as you sit here
9 today, working on any formulating compositions of and
10 delivering medicine and supplements to infants one or
11 younger, age one or less, correct?

12 A. Well, like I said, I would have to check in
13 this one example of an antibiotic if the approved
14 label is for children less than one. I just don't
15 know? --

16 Q. Okay.

17 A. -- sitting here today.

18 Q. Yeah. But with regard to the antibiotic that
19 you recall, that was to be put into what I call a food
20 and then fed to the infant, correct, or fed to the
21 young child?

22 A. It was to be mixed with, as I remember, like
23 applesauce or yogurt or in the formula. That's what I
24 recall.

25 Q. All right. If you go to Paragraph 4 of your

1 report, sir, in your first sentence you reference in
2 the fields relating to the 958 patent.

3 Do you see that?

4 A. Yes.

5 Q. What are the fields relating to the 958 patent
6 to which you are referring there?

7 A. There. I was referring to the fields of
8 pharmaceuticals, drug delivery methods of delivering a
9 nutritional or therapeutic substance. That's what I
10 was referring to.

11 Q. And just so we're clear on the record, what is
12 the field of pharmaceuticals?

13 A. Pharmaceuticals deals with the delivery and
14 design of a dosage form and a device for -- if it
15 requires a device, for delivering a particular
16 nutritional supplement or drug, therapeutic agent,
17 generally speaking. And that would include, you know,
18 analytical characterization. It would include pre
19 formulation studies of the active ingredient. It
20 would include the pharmacokinetics of the -- of
21 delivering the active into and measuring a blood --
22 blood level. That's generally what pharmaceuticals is.

23 Q. Okay. Now you used another word that I'm
24 going to have to ask you to explain.
25 Pharmacokinetics?

1 A. Yes.

2 Q. What does that mean?

3 A. So that's when the absorption, distribution,
4 metabolism, and excretion of the drug is studied upon
5 administration --

6 Q. Okay.

7 A. -- in the bloodstream.

8 Q. Could you turn to Page 7 of your report, sir?

9 Okay. And in Paragraph 11, and we talked a little bit
10 about this, you said you referenced materials listed
11 in Exhibit C.

12 Do you see that, sir?

13 A. Yes.

14 Q. And it says that I have reviewed portions of
15 the materials listed in Exhibit C. Do you see that?

16 A. Yes.

17 Q. Can you tell me more specifically, looking
18 back at Exhibit C, what portions you reviewed of those
19 items listed there? All right. So strike that.

20 When you say portions, do you mean you
21 reviewed some of the materials listed in Exhibit C, or
22 you reviewed only parts of some of the materials
23 listed in Exhibit C? Do you know what I mean in terms
24 of portions, the ambiguity?

25 A. Yes. Okay, yes. So I -- okay.

1 Q. Go ahead.

2 A. My turn. All right. So I looked at all the
3 references that I have listed in Exhibit C. Portions
4 refers to, like the third bullet point declaration and
5 curriculum vitae of librarian June Mumford.

6 I looked at the declaration. I don't recall
7 looking at Mumford's CV. So that -- that's what I
8 meant.

9 Q. That's an example?

10 A. That's an example.

11 Q. Okay. Do you know -- can you identify any of
12 the other items there in Exhibit C where you only
13 reviewed parts of them?

14 A. So the on Page 132, it's the first bullet
15 item. It says Handbook of Pharmaceutical Excipients,
16 Fourth Edition by Rowe. I looked at the.

17 MS. PATEL: Sorry. Can I throw in my slight
18 instruction objection. To the extent that he did
19 things as far as his work product, I'm going to
20 instruct the witness not to answer what he did to
21 prepare his declaration.

22 MR. ANDERSON: Well, are you instructing him
23 not to answer the question that I posed?

24 MS. PATEL: He can identify if he can about
25 mentioning any work product he performed, if like he

1 had (indiscernible) Ms. Mumford. There are portions
2 in there that's he mentioned he had reviewed.

3 MR. ANDERSON: Well, just so we're clear, I
4 believe I'm entitled to know what he did to prepare
5 his opinions in Exhibit 17. And my question is asking
6 him to identify any other items in Exhibit C that he
7 only reviewed a portion of. And he has identified
8 already the third bullet point, Declaration and
9 Curriculum Vitae of Librarian June Mumford. I then
10 asked him, are there any others? And he was in the
11 midst of identifying the first bullet point on Page
12 132.

13 BY MR. ANDERSON:

14 Q. Did I summarize that correctly, sir?

15 A. Yes.

16 Q. All right. So you looked at a part of the
17 Handbook of Pharmaceutical Excipients; is that
18 correct?

19 MS. PATEL: And I'm still going to object to
20 that being work product. He is allowed to testify on
21 what his opinions are and what he did to prepare them.
22 But his work product is different than his actual
23 (indiscernible).

24 MR. ANDERSON: How is what -- to the extent
25 what he looked at not -- or how is that work product?

1 MS. PATEL: It's what he did to prepare his
2 declaration. It's not his actual opinion.

3 MR. ANDERSON: I'm going to ask the question
4 and you can instruct him not to answer or not, but
5 otherwise, we're going to proceed.

6 BY MR. ANDERSON:

7 Q. Mr. -- or excuse me. Dr. Williams, am I
8 correct that you testified that you reviewed only a
9 portion of the Handbook of Pharmaceutical Excipients?
10 That's the first bullet point on Page 132.

11 MS. PATEL: I'm going to object to that being
12 privileged work product and instruct the witness not
13 to answer.

14 BY MR. ANDERSON:

15 Q. Going to abide by that instruction, sir?

16 A. Yes.

17 Q. Can you tell me -- do you -- can you tell me
18 what portion of the Handbook of Pharmaceutical
19 Excipients, Fourth Edition you reviewed in the
20 preparation of your report?

21 MS. PATEL: I'm going to object to that being
22 privileged work product and instruct the witness not
23 to answer.

24 BY MR. ANDERSON:

25 Q. Going to abide by your counsel's instruction,

1 sir?

2 A. Yes.

3 Q. Other than the two bullet points that you have
4 identified in Exhibit C, are there any other of those
5 items that you only reviewed a portion of?

6 MS. PATEL: Object to that being privileged
7 work product and instruct the witness not to answer.

8 BY MR. ANDERSON:

9 Q. Going to abide by your counsel's instruction,
10 sir?

11 A. Yes.

12 Q. In connection with the revision of your
13 report -- draft, the preparation and revision of your
14 report, Exhibit 17, have you spoken with any employee
15 of MOM?

16 MS. PATEL: Object to that also being
17 privileged and instruct the witness not to answer.

18 BY MR. ANDERSON:

19 Q. Okay. Are you going to abide by your
20 counsel's instruction?

21 A. Yes.

22 Q. By the way, just for the record, you're not an
23 attorney, are you, sir?

24 A. No.

25 Q. You do not have a law degree from any

1 institution?

2 A. That is true. I do not.

3 Q. Lucky you.

4 Could you turn to Page 8 of your report, sir?

5 A. Yes.

6 Q. Paragraph 15, you say counsel Fish &
7 Richardson has informed me, and you go on there --
8 from there.

9 Do you see that?

10 A. Yes.

11 Q. Do you recall who more specifically from Fish
12 & Richardson informed you?

13 MS. PATEL: Objection. Form.

14 THE WITNESS: What was it?

15 MS. PATEL: Form.

16 THE WITNESS: That would've been -- oh, I've
17 only talked to Ms. Patel and Mr. Conrad. So would
18 have been one or both of them.

19 BY MR. ANDERSON:

20 Q. Okay. There are a number of paragraphs in
21 your report that indicate or say, I have been informed
22 by counsel. Do you recall that generally, sir?

23 A. Yes.

24 Q. For each of those when it says I am informed
25 by counsel, that would be Ms. Patel or Mr. Conrad; is

1 that correct?

2 A. Yes.

3 Q. And did Ms. Patel or Mr. Conrad inform you of
4 the -- of these various things in all these paragraphs
5 on one occasion or multiple occasions?

6 MS. PATEL: Objection. Form.

7 THE WITNESS: I don't recall. I mean, I had
8 to have my understanding so I could, but I don't
9 remember if there was one or more occasions. But it
10 was while I was preparing my declaration.

11 BY MR. ANDERSON:

12 Q. Do you recall whether the first draft of
13 Exhibit 17 that was prepared by Fish & Richardson
14 contained the various paragraphs that begin, I am
15 informed by counsel and understand?

16 MS. PATEL: Objection. Foundation, form, and
17 privilege. I'm going to instruct the witness not to
18 answer.

19 BY MR. ANDERSON:

20 Q. Going to abide by your counsel's instruction?

21 A. Yes.

22 Q. Were you provided any summaries of any
23 decisional law or cases to review in preparing or in
24 revising the draft originally given to you by counsel
25 for Fish & Richardson?

1 MS. PATEL: Objection. Foundation, form,
2 privilege.

3 Instruct the witness not to answer that
4 question.

5 BY MR. ANDERSON:

6 Q. Going to abide by your counsel's instruction.

7 A. Yes.

8 Q. In Paragraph 15, about third sentence it says,
9 quote, Counsel has indicated that I should use
10 September 14, 2006 as the earliest priority date of
11 the 958 patent. Close quote.

12 Do you see that, sir?

13 A. I do.

14 Q. You did not do any independent determination
15 of the priority date for the 958 patent, correct?

16 MS. PATEL: Objection. Foundation. Form.

17 THE WITNESS: I did not.

18 BY MR. ANDERSON:

19 Q. Did Ms. Patel or Mr. Conrad tell you why
20 September 14, 2006 was the earliest priority date of
21 the 958 patent?

22 MS. PATEL: Objection. Privilege and instruct
23 the witness not to answer.

24 BY MR. ANDERSON:

25 Q. Are you going to abide by your counsel's

1 instruction?

2 A. Yes.

3 Q. If you turn to Page 96, okay, beginning in

4 Paragraph 19, there's a discussion of the level of

5 ordinary skill in the art.

6 Do you see that?

7 A. Yes.

8 Q. The second sentence there says or begins, I

9 understand that the factors considered in determining

10 the ordinary level of skill in a field of art include,

11 and it goes on from there.

12 Do you see that, sir?

13 A. I do.

14 Q. Is that understanding based on what you were

15 told by Ms. Patel and/or Mr. Conrad?

16 A. Yes.

17 Q. Did they provide that to you in writing in the

18 first draft of this report, or did they provide it to

19 you verbally or both?

20 MS. PATEL: Objection. Privilege and instruct

21 the witness not to answer.

22 BY MR. ANDERSON:

23 Q. Are you going to abide by your counsel's

24 instruction?

25 A. Yes.

1 Q. If we go to the next page, Page 10, Paragraph
2 20, do you see that, sir?

3 A. Yes.

4 Q. Take a moment to read through it just to make
5 sure it's fresh in your mind, and let me know when
6 you're done, and I'll ask you a couple of questions.

7 A. Okay. I'm ready.

8 Q. All right. Did Ms. Conrad -- Ms. Patel or Mr.
9 Conrad provide this description of a POSITA, as we in
10 the business use the acronym, person of ordinary skill
11 in the art.

12 Did they provide that to you in the first
13 draft of the report?

14 MS. PATEL: Objection. Privilege.

15 Instruct the witness not to answer.

16 BY MR. ANDERSON:

17 Q. Going to abide by your counsel's instruction.

18 A. Yes.

19 Q. Did you come up with this description on your
20 own?

21 MS. PATEL: Objection. Privilege.

22 Instruct the witness not to answer.

23 BY MR. ANDERSON:

24 Q. By the way, just to go back for a second in
25 Paragraph 11, you reference petitioner's IPR petition.

1 Do you see that, sir?

2 A. Yes.

3 Q. And you say, I understand that copies of these
4 materials have been submitted as separate exhibits to
5 petitioner's IPR petition as well as to the
6 declaration of June Mumford.

7 Do you see that?

8 A. Yes.

9 Q. My question is this, sir: I will represent to
10 you that the petitioner's petition, IPR petition is
11 dated --

12 A. It was the 16th.

13 Q. -- March 16th of 2023 and your declaration is
14 dated March 15th of 2023, the day before. How is it
15 that you had the understanding that copies of the
16 materials had been submitted as separate exhibits to
17 Petitioners's IPR petition when you signed your
18 report?

19 A. I was told that.

20 Q. By counsel?

21 A. Yes.

22 Q. I mean you can't see in the future, right?

23 A. No, I haven't reviewed it. So --

24 Q. Okay.

25 A. But I mean that was my understanding.

1 Q. I mean, you signed this on March 15th, this
2 being Exhibit 17, but the IPR is dated March 16. You
3 didn't foresee into the future that they have been --
4 that these copies have been submitted as separate
5 exhibits to Petitioners' IPR petition, did you, sir?

6 A. This was what I was -- that was my
7 understanding. That's why it's in there.

8 Q. That's what you were told was done, correct?

9 MS. PATEL: Objection. Privileged.

10 Instruct the witness not to answer.

11 BY MR. ANDERSON:

12 Q. Going to abide by your counsel's instruction,
13 sir?

14 A. Yes.

15 Q. Have you ever reviewed Petitioners' IPR
16 petition?

17 A. No.

18 Q. As you sit here today, have you seen it?

19 A. No.

20 Q. Have you ever seen the patent trial and appeal
21 board's decision granting institution of interparty's
22 review dated September 15th of 2023?

23 A. No.

24 Q. Are you aware that the patent trial and appeal
25 board in instituting the IPR, at least at that time,

1 rejected your description of a person of ordinary
2 skill in the art, the second sentence that begins, In
3 the alternative?

4 MS. PATEL: Objection. Foundation.
5 Relevance.

6 THE WITNESS: I'm not aware of that.

7 BY MR. ANDERSON:

8 Q. Okay. Have you been asked as you sit here
9 today to consider the points raised by the board in
10 their regarding what the description of a person of
11 ordinary skill in the art is?

12 MS. PATEL: Objection to privilege, and
13 instruct the witness not to answer.

14 BY MR. ANDERSON:

15 Q. You going to abide by your counsel's
16 instruction, sir?

17 A. Yes.

18 Q. In Paragraph 21, sir, you state that your
19 level of skill in the art exceeded that of a POSITA by
20 September 14th of 2006.

21 Do you see that?

22 A. Yes.

23 Q. As of September 14, 2006, what was your level
24 of skill in the art as you reference here in Paragraph
25 21?

1 A. I mean, I excelled -- what's in paragraph 20
2 for the -- a POSA just because I have a lot of
3 experience. But I can put myself in the position, the
4 hypothetical position of a person of ordinary skill in
5 the art, because I teach this level of person and I
6 work with this level of person. So I feel that I can
7 put myself in their position.

8 Q. You reference your teaching. Do you teach
9 purely at the graduate or PhD level, or you also teach
10 undergrads?

11 A. I teach PharmD students who are most -- most
12 have a bachelor degree. So they're -- the PharmD
13 they're working on. I teach PhD students, and I also
14 teach postdoctoral fellows that would, you know, meet
15 this.

16 Q. So your teaching is at the doctoral level for
17 either professional or academic?

18 A. You mean -- well, I mean, I also teach honors
19 courses and problems course to undergraduate students
20 at -- who are enrolled at UT and different colleges.
21 I also teach those students.

22 Q. Just so we're clear, a PharmD is what?

23 A. Okay.

24 Q. So you referenced --

25 A. Yeah.

1 Q. -- a PharmD? I'm pretty sure I know what it
2 is. It's like a JD. What's a PharmD so we have it on
3 the record?

4 A. Yeah. A PharmD is, it's a professional Doctor
5 of Pharmacy degree. So it is in our class at least
6 now, about 60 to 70 percent have prior degrees. But
7 you do not have to have a prior degree in order to
8 enroll in the doctor -- the professional doctor of
9 pharmacy program. So I teach at that level.

10 Q. Is that a three-year program?

11 A. It's a four-year program.

12 Q. Four-year. Okay. And then you also teach PhD
13 students?

14 A. Correct. I teach PhD students. And what I
15 was saying is I also teach undergraduate students,
16 typically in college of natural sciences or
17 engineering that will come in and do, we call it
18 either part of an honors program or a problems course
19 where they come in. I work one on one with them and
20 teach them and they have a research project.

21 Q. Do you teach medical students?

22 A. I have in the past as part of an
23 entrepreneurship course that I teach. And there are
24 medical -- have been medical students in the past.
25 So...

1 Q. When you say in the past, how long ago was
2 that?

3 A. Oh, probably three years.

4 Q. Okay. You don't regularly teach a course in
5 the medical school program, at least to the degree of
6 a doctor of medicine, correct?

7 A. That I do not.

8 Q. You don't teach nursing students, do you, sir?

9 A. I do not.

10 Q. With regard to your opinion in Paragraph 20 of
11 what a POSITA is, have you reevaluated your opinion at
12 all in view of the board's assessment of what a POSITA
13 is as indicated in their decision instituting the IPR?

14 A. No, I haven't.

15 Q. Could you turn to Page 11 an Paragraph 22,
16 sir. In about the middle of paragraph 22 you say,
17 quote, Counsel has also informed me, and I understand
18 that. The words of the claims should be interpreted
19 as they would have been interpreted by a POSITA at the
20 time of the invention was made, paren, not today,
21 close paren. Close quote.

22 Do you see that?

23 A. Yes.

24 Q. Do you understand the concept of claim
25 construction or have you heard of it?

1 A. I'm generally familiar with it, at least
2 from -- yes.

3 Q. Okay. What claim construction did you use, if
4 any, in the preparation of your -- or in the
5 finalization of the report, which is Exhibit 17?

6 A. I didn't use -- I didn't construe claims. I
7 understood that I should interpret them as they would
8 have been interpreted by a POSA at the time the
9 invention was made.

10 Q. Okay. How would a POSITA interpret the claims
11 at the time the invention was made?

12 A. Well, how I did it was and how I understood to
13 do it was use their -- the meaning as I would
14 understand it based on my experience and based on my
15 understanding of the specification of the patent.

16 Q. Is there anywhere in Exhibit 17 that sets
17 forth the claim construction that you -- or
18 interpretation that you applied?

19 A. There is not.

20 Q. And again, and I apologize. I think I asked
21 this. I just want to make very clear in the following
22 Paragraphs 23 through 39, they all say, I've been
23 informed by counsel and understand.

24 That's all based on what you were told by Ms.
25 Patel and/or Mr. Conrad, correct?

1 A. Yes.

2 Q. And that was all verbal, not in writing; is
3 that correct?

4 MS. PATEL: Objection. Form.

5 BY MR. ANDERSON:

6 Q. Other than to the extent it was already in the
7 first draft that they sent to you; is that true?

8 MS. PATEL: Objection. Privileged. Instruct
9 the witness not to answer.

10 BY MR. ANDERSON:

11 Q. You're going to abide by your counsel's
12 instruction?

13 A. Yes.

14 Q. Okay. I think I know what the response to
15 this is going to be, but I just want to make it clear
16 so it's on the record. So in Paragraph 23, you say, I
17 have been informed by counsel and understand. And it
18 goes from there.

19 Do you see that?

20 A. Yes.

21 Q. What specifically as you can recall, did
22 counsel tell you with regard to documents and
23 materials that qualify as prior art can render a
24 patent claim unpatentable, et cetera?

25 MS. PATEL: Objection. Privilege. Instruct

1 the witness not to answer.

2 BY MR. ANDERSON:

3 Q. And that would be -- you would -- counsel --

4 Are you going to abide by your counsel's

5 instruction?

6 A. Yes.

7 MR. ANDERSON: And Counsel, again, just to

8 save time, if I ask the same question with regard to

9 each of these paragraphs, the paragraphs where it

10 says, I've been informed by counsel, et cetera, you

11 would give the same instruction, correct?

12 MS. PATEL: To the extent that you ask the

13 witness what we told him.

14 MR. ANDERSON: Yes, correct. Thank you.

15 BY MR. ANDERSON:

16 Q. So, for example, using this as an example, in

17 Paragraph 28 on Page 12, it says what I was -- what

18 you were informed by counsel.

19 Do you see that?

20 A. Yes.

21 Q. And I if I asked you more specifically what

22 you what you were told, I'll just ask it for the

23 record. In the last sentence you say, I am informed

24 by counsel and understand, and it goes on from there.

25 Do you see that?

1 A. Yes.

2 Q. Can you tell me more as specifically as you
3 recall what you were told by counsel in that regard?

4 MS. PATEL: Objection. Privileged.

5 Instruct the witness not to answer.

6 BY MR. ANDERSON:

7 Q. Are you going to abide by your counsel's
8 instruction?

9 A. Yes.

10 Q. Thank you. Could you turn to Page 13, sir,
11 and Paragraph 30, the last sentence. Begins, I am
12 informed by counsel and understand that it is improper
13 to use hindsight in an obviousness analysis and that a
14 patent's claim should not be used as a internal quote
15 roadmap, closed internal quote, close quote.

16 Do you see that, sir?

17 A. Yes.

18 Q. Were you told anything more by counsel with
19 regard to the impropriety use of hindsight or using a
20 patent claims as a roadmap other than what is set
21 forth in that sentence of Paragraph 30?

22 MS. PATEL: Objection. Privilege.

23 Instruct the witness not to answer.

24 BY MR. ANDERSON:

25 Q. Are you going to abide by your counsel's

1 instruction?

2 A. Yes.

3 Q. In Paragraph 31, sir, it begins quote, I am
4 informed by counsel and understand that an obviousness
5 inquiry requires consideration of the following
6 factors.

7 Do you see that?

8 A. Yes.

9 Q. And then it lists four factors, including four
10 subparts to the last factor. Do you see that?

11 A. Yes.

12 Q. Okay. Were you given any other factors by
13 counsel that the obviousness inquiry required other
14 than what is set forth in Paragraph 31?

15 MS. PATEL: Objection. Privileged.

16 I'll instruct the witness not to answer.

17 BY MR. ANDERSON:

18 Q. Going to abide by your counsel's instruction?

19 A. Yes.

20 Q. Item 4 in your list of required factors for
21 consideration is any so-called secondary
22 considerations of nonobviousness.

23 Do you see that, sir?

24 A. Yes.

25 Q. You did not consider any secondary

1 considerations of nonobviousness in reaching your
2 opinions in Exhibit 17, correct?

3 MS. PATEL: Objection. Foundation. Form.

4 THE WITNESS: I did not.

5 BY MR. ANDERSON:

6 Q. Was there a reason why you did not consider
7 any secondary considerations?

8 MS. PATEL: Objection. Foundation. Form.
9 Privileged.

10 Instruct the witness not to answer.

11 BY MR. ANDERSON:

12 Q. Are you going to abide by your counsel's
13 instruction?

14 A. Yes.

15 Q. Were you told that there were secondary
16 considerations of nonobviousness, but that you should
17 not consider them?

18 MS. PATEL: Objection. Privileged.

19 Instruct the witness not to answer.

20 BY MR. ANDERSON:

21 Q. Are you to abide by your counsel's
22 instruction?

23 A. Yes.

24 Q. Were you given any information to consider
25 relating to secondary considerations of

1 nonobviousness?

2 MS. PATEL: Objection. Privilege.

3 Instruct the witness not to answer.

4 BY MR. ANDERSON:

5 Q. Were you given -- are you going to abide by
6 your counsel's instruction?

7 A. Yes.

8 Q. Were you given any documents relating to
9 secondary considerations of nonobviousness?

10 MS. PATEL: Objection. Privileged.

11 Instruct the witness not to answer.

12 BY MR. ANDERSON:

13 Q. Are you going to abide by your counsel's
14 instruction?

15 A. Yes.

16 Q. In Paragraph 32, sir, on Page 14, the last
17 sentence says, quote, I have been informed by counsel
18 and understand that obviousness analysis recognizes
19 that market demand rather than scientific literature
20 often drives innovation and that a motivation to
21 combine references may be supplied by the direction of
22 the marketplace.

23 Do you see that?

24 A. Yes.

25 Q. Were you given any information relating to

1 market demand at or about the time of the invention
2 for the product relating to the 958 patent?

3 MS. PATEL: Objection. Privilege.

4 Is the witness not to answer.

5 BY MR. ANDERSON:

6 Q. Did you receive any documents relating to
7 market demand that you reviewed in connection with
8 Exhibit 17?

9 MS. PATEL: Objection. Privileged.

10 Instruct the witness not to answer.

11 BY MR. ANDERSON:

12 Q. Going to abide by your counsel's instruction?

13 A. Yes.

14 Q. Were you given any information or documents
15 relating to the direction of the marketplace as
16 referenced in Paragraph 32 of your report?

17 MS. PATEL: Objection. Privileged.

18 Instruct the witness not to answer.

19 BY MR. ANDERSON:

20 Q. Going to abide by your counsel's instruction?

21 A. Yes.

22 Q. Would turn to Page 15, sir. Paragraph 37
23 states, quote, I have been informed by counsel and
24 understand that there must be a relationship between
25 any secondary considerations and the invention, and

1 that contemporaneous and independent invention by
2 others is a secondary consideration supporting an
3 obviousness determination, close quote.

4 Do you see that, sir?

5 A. I do.

6 Q. Were you provided any evidence of
7 contemporaneous and independent invention by others in
8 connection with your or what resulted in your
9 declaration in Exhibit 17?

10 MS. PATEL: Objection. Privileged.

11 Instruct the witness not to answer.

12 BY MR. ANDERSON:

13 Q. Going to abide by your counsel's instruction?

14 A. Yes.

15 MR. ANDERSON: We've been going about an hour,
16 and I'm about to start another section, so how about
17 we take a short break?

18 MS. PATEL: Sounds good.

19 THE REPORTER: Sounds good. We're going off
20 the record. The time is 11:05 a.m., Central Standard
21 Time.

22 (A recess was taken.)

23 THE REPORTER: All right. We are back on the
24 record. The time is 11:30 a.m., Central Standard
25 Time.

1 Counsel, you may continue.

2 MR. ANDERSON: Thank you.

3 BY MR. ANDERSON:

4 Q. Dr. Williams, I'd like to direct your
5 attention back to Exhibit 18, which is your
6 declaration filed in 2017.

7 Do you have that in front of you, sir?

8 A. Yes.

9 Q. Okay. In Exhibit 18, you summarize some
10 opinions in Paragraph 30 -- beginning in Paragraph 38
11 on Page 10.

12 A. Okay.

13 Q. And in Paragraph 41 you state, quote, In my
14 opinion, it would have been obvious to combine Harder
15 with Wolfe, Stoppart, Blass, and/or Gibbons to
16 practice the method of claim one of the 958 patent.

17 Do you see that?

18 A. Yes.

19 Q. And if you go to Exhibit 17, your declaration
20 in this case, your combination that you that you
21 discuss relating to claim one is a combination of
22 Carter, Wolfe, and European Pharmacopeia Supplement
23 4.3.

24 My question is why is your opinion regarding
25 the combination for claim one different between

1 Exhibit 17 and Exhibit 18?

2 A. So I haven't looked at Exhibit 18, so I
3 haven't reviewed it. I don't know when the last time
4 I reviewed it. Okay. So but the -- as -- I mean
5 looking at it now, it seems like the questions I was
6 asked regarding the prior art for Exhibit 18 were
7 different than the prior art that I was asked to opine
8 on in Exhibit 17.

9 Q. So are you saying that the prior art that you
10 were provided by and combinations that you were
11 provided by counsel with respect to Exhibit 18, the
12 2017 declaration, were different from the prior art
13 combinations you were provided by counsel for Exhibit
14 17?

15 MS. PATEL: Object to that being privileged.
16 And instruct the witness not to answer.

17 BY MR. ANDERSON:

18 Q. Abide by your counsel's instruction?

19 A. Yes.

20 Q. Also in Exhibit 18, your 2017 declaration, the
21 combination that you provide with respect to your
22 obviousness opinion for claim three in Paragraph 43 is
23 different from the combination of prior art that you
24 described in Exhibit 17.

25 Can you tell me why your opinion is different

1 between the two?

2 A. Well, my opinion is different because it's --
3 it's different prior art that I was considering. I
4 mean, with regards to claim three, Harder and Wolfe,
5 are the same references, but Stoppart is different
6 and -- yeah. I mean, it was a different -- the
7 Stoppart was -- was considered in Exhibit 18 for claim
8 three, and that was not part of what I was asked to
9 review for Exhibit 17.

10 Q. So, again, the prior art combinations that you
11 were given in connection with your work on Exhibit 18
12 in 2017 is different from the prior art combinations
13 you were given in connection with your work in Exhibit
14 17, correct?

15 MS. PATEL: Objection. Privileged.

16 I'm going to instruct the witness not to
17 answer.

18 BY MR. ANDERSON:

19 Q. You going to abide by your counsel's
20 instruction?

21 A. Yes.

22 Q. With regard to claim four, the combination
23 that you identify in Paragraph 44 of Exhibit 18 is
24 different from the combination identified in Exhibit
25 17.

1 Can you tell me why they're different?

2 A. My opinions are different for claim four in
3 Exhibit 18. It had a reference Albright in addition
4 to Harder and Wolfe, and Albright was not -- I didn't
5 consider Albright in my opinion for claim four in
6 Exhibit 17.

7 Q. So, again, the combination of prior art that
8 you were given for your work in Exhibit 18, it was
9 different from the combination of prior art you were
10 given for your work in Exhibit 17, correct.

11 MS. PATEL: Objection. Form. Objection
12 privilege.

13 Instruct the witness not to answer.

14 BY MR. ANDERSON:

15 Q. Going to abide by your counsel's instruction?

16 A. Yes.

17 Q. Thank you. By the way, sir, do you recall
18 that Blass was cited to the patent office in
19 connection with the prosecution of the 958 patent?

20 A. Yes.

21 Q. Did it make any difference to your analysis in
22 connection with your work relating to Exhibit 17 that
23 Blass was cited to and considered by the patent
24 office?

25 A. I mean, I read the prosecution history about

1 Blass, and it didn't change -- it doesn't change my
2 opinion.

3 Q. Do you recall that the European Pharmacopeia
4 of December 31st of 2001 was cited to the patent
5 office and considered during examination, correct?

6 A. Yeah.

7 Q. Sorry.

8 A. Yes.

9 Q. And in your report, Exhibit 17, you were asked
10 to consider European Pharmacopeia Supplement 4.3 from
11 2003, correct?

12 A. Yes.

13 Q. Is there any difference or did -- is there any
14 difference, to your knowledge, between what is
15 disclosed in European Pharmacopeia 2001 that was
16 considered by the patent office versus European
17 Pharmacopeia Supplement 4.3 of 2003?

18 MS. PATEL: Objection. Foundation.

19 THE WITNESS: I don't know if there's any
20 differences or not. I -- I haven't reviewed the 2021
21 version that's cited on the face of the 958 patent.

22 BY MR. ANDERSON:

23 Q. In Exhibit 18 and Exhibit D to that document,
24 your 2017 declaration, there is a chart. Do you see
25 that?

1 A. See D?

2 Q. Yes.

3 A. Yes, I do.

4 Q. Okay. And did you consider that chart or any
5 of the information in that chart in connection with
6 your work on Exhibit 17?

7 MS. PATEL: Objection. Privileged.

8 Instruct the witness not to answer.

9 BY MR. ANDERSON:

10 Q. Going to abide by your counsel's instruction?

11 A. Yes.

12 Q. Thank you. Beginning on Page 3 of Exhibit 18,
13 your 2017 declaration, you have a claim construction
14 set forth. Do you see that?

15 A. Yes.

16 Q. And you testified previously that you did not
17 consider any claim construction in connection with
18 your work on Exhibit 17, correct?

19 MS. PATEL: Objection to form.

20 THE WITNESS: I did not have claim
21 construction as part of my Exhibit 17 opinion.

22 BY MR. ANDERSON:

23 Q. Okay. Given that you had a claim construction
24 or you utilized the claim construction in connection
25 with you're the preparation of your opinions in

1 Exhibit 18, why did you not use any claim construction
2 in connection with your work on Exhibit 17?

3 MS. PATEL: I'm sorry. Can I hear that again?

4 THE REPORTER: Give me one second to queue
5 that up.

6 (The requested question was played back.)

7 MS. PATEL: Okay. I object to that being
8 foundation, privilege, and scope and privileged work
9 product, and instruct the witness not to answer.

10 BY MR. ANDERSON:

11 Q. Are you going to abide by your counsel's
12 instruction?

13 A. Yes.

14 Q. Could you turn to back to page -- or your
15 Exhibit 17, sir. And in Paragraph 40, the second
16 sentence that begins I understand, do you see that,
17 sir?

18 A. Paragraph 40? Yeah, I see it. Yes.

19 Q. Yes. And in it you say, and I'm paraphrasing,
20 that the 958 patent is generally related to a
21 composition comprising of Vitamin D in a medium chain
22 triglyceride and the use thereof for human beings,
23 particularly breast feeding in infants.

24 Do you see that?

25 A. Yes.

1 Q. What is the basis for your understanding
2 there, sir? Is that something you were told by
3 counsel?

4 MS. PATEL: Objection. Privileged to the
5 extent that it involves any communications with
6 counsel, he can answer the question. Answer is not
7 (indiscernible) --

8 THE WITNESS: Yeah. And it doesn't involve
9 any communication with counsel. So that when I read
10 the 958 patent, that's my understanding. And that
11 particular sentence is, my basis is Column 1, Lines 10
12 through 12.

13 BY MR. ANDERSON:

14 Q. In the next sentence you reference that all
15 the claims in the 958 patent are method claims. Do
16 you see that, sir?

17 A. Yes.

18 Q. What is your understanding of what a method
19 claim is?

20 A. My understanding is it's because the
21 independent claims -- sorry. I don't have a -- I
22 don't have it memorized, and I don't have it copied.
23 Oh, I do have a -- no. You have a -- thank you.

24 Q. We can take care of that straight away.

25 A. Thank you.

1 MR. ANDERSON: I will mark as Exhibit 19 --
2 hand you a copy of US patent number 96 -- excuse me.
3 9066958B2.

4 THE WITNESS: Thank you.
5 (Defendant's Exhibit 19 was marked for
6 identification.)

7 MS. PATEL: Thank you.

8 THE WITNESS: So my understanding --

9 MR. ANDERSON: Wait. Wait.

10 THE WITNESS: I'm sorry.

11 BY MR. ANDERSON:

12 Q. You recognize Exhibit 19 as a copy of the 958
13 patent that we have been discussing?

14 A. Yes.

15 Q. All right. Now, go ahead. When I asked you
16 what is the basis for your understanding that all 12
17 claims in the 958 patent are method claims. And I ask
18 you what is your understanding of what a method claim
19 is?

20 A. So my understanding and why I wrote this is
21 because when I read the claims, like independent claim
22 one, it says a method of delivering and it goes on.
23 And so all of the -- all of the 12 claims use similar
24 language. A method, the independent claims 1, 6, and
25 10 have the phrase a method of delivering. So that --

1 that's why I understand them to be method claims.

2 Q. Okay. By the way, you don't read German, do
3 you, sir?

4 A. No.

5 Q. Could you turn to Page 19 in the section
6 beginning with Paragraph 47.

7 A. Okay.

8 Q. This subsection is headed Vigantol oil. Do
9 you see that?

10 A. Yes.

11 Q. Why do you have a subsection relating to
12 Vigantol oil in your report?

13 A. So I have a section on Vigantol oil in my
14 report because in the previous paragraph 46, I'm
15 talking about the 958 patent in Column 2, Lines 53 to
16 Column 3, Line 17, where the 958 patent makes
17 reference to, quote, one prescription product contains
18 Vitamin D in an unspecified oil, in parentheses,
19 20,000 IU, in parentheses, 500 micrograms, close
20 parentheses, per mil of oil.

21 And it goes on to say that -- I go on to say,
22 sorry, that another part says the patent describes a
23 purported problem. That's the method of mixing two
24 drops into two drops of milk or mash. So and then I
25 state the 958 patent in that -- in that -- in Column

2, Line 53, starting that I referred to earlier, does not identify that commercial product.

Then I go on to say that my understanding is that the Canadian patent application, it ends in 202 but I don't remember the whole number. It's -- well, it's MOM -- so it's Canadian Patent Application 2558202.

I understand that's the -- that is the patent claims prior -- the 958 patent claims priority to that Canadian application. And in that Canadian application in -- over the corresponding paragraph, there's a parenthetical that I know that's that mentions Vigantol dosing instruction for Rickets as translated from German. And it has a website.

So that's -- that's why then I describe what Vigantol oil is based on what I -- what I explained in Section B on Page 19.

Q. You don't use Vigantol oil as a piece of prior art in connection with your opinion, correct? It's not one of the items in any of your combinations.

A. Vigantol oil itself.

Q. Yes, itself.

A. Well, I use it as it's identified in the Harder translation and the Wolfe translation, the composition and the methods of use. That's how I use

1 it. But if you're asking if I use the actual Vigantol
2 oil product, well, I mean, it's all -- it's based on
3 the Wolfe translation and the Harder translation for
4 Vigantol oil.

5 Q. Yes? But you don't not -- you do not use
6 Vigantol oil, the product, as any item of prior art in
7 any of the combinations in your Exhibit 17, correct?

8 A. I use what the Harder translation and the
9 Wolfe translation, what they describe Vigantol oil has
10 containing and how Vigantol oil is, at least based on
11 those two translations, how it's used.

12 Q. Well, the your prior art references that you
13 use as listed on page eight, it's none of them are
14 Vigantol oil the product, correct?

15 A. Yeah. Sorry. So when you say Vigantol oil,
16 the product, do you mean like a product label or
17 something? I don't use those.

18 Q. Yeah. I mean you understand that a product
19 can be prior art? A thing?

20 A. I don't -- for me, it's a document or it's
21 a -- it's a label or -- I'm not -- like I don't really
22 understand what you mean by a product being prior art.
23 That's not referenced somewhere that I can point to.
24 I guess, if it -- but if it's a product and you have a
25 label -- so if it's the product label, I understand

1 that.

2 Q. Okay.

3 A. Yeah.

4 Q. You did not consider the product label or

5 the -- as prior art for -- the product label for

6 Vigantol oil as prior art, correct?

7 MS. PATEL: Objection. Privileged.

8 Instruct the witness not to answer.

9 BY MR. ANDERSON:

10 Q. Going to abide by the instruction?

11 A. Yes.

12 Q. Would you agree with me that the prior art
13 references listed in Paragraph 13 of your report do
14 not in Vigantol oil standing alone?

15 A. As the product label, the references that I
16 list on that table do not include like a Vigantol oil
17 label.

18 Q. All right. By the way, in the prior art
19 references that you were provided by counsel, one of
20 them is excerpts from European Pharmacopeia Supplement
21 4.3, 2003. Do you see that?

22 A. Yes.

23 Q. First off, the excerpts that you considered
24 were provided to you by MOM's counsel, Fish \$
25 Richardson, correct?

1 MS. PATEL: Objection. Form.

2 THE WITNESS: Yes.

3 BY MR. ANDERSON:

4 Q. Okay. You did not select the excerpts. It
5 was like here's the excerpts for you to consider,
6 correct?

7 MS. PATEL: Objection; form. Objection;
8 privilege.

9 Instruct the witness not to answer that
10 question.

11 BY MR. ANDERSON:

12 Q. Going to abide by your counsel's instruction?

13 A. Yes.

14 Q. Can you identify for me more specifically
15 which excerpts you considered?

16 A. Well, it's the it's the -- sorry. I forget
17 the Bates number. It's exhibit -- it's -- if you go
18 back, I think, to Page 131. Wait -- page -- oh, yeah.
19 Oh, yeah. So -- so I could -- so it's on -- sorry.
20 Bear with me one second.

21 Well, I don't know what the Bates -- I don't
22 know why I don't have the Bates number for the EP, but
23 it was the monograph for medium chain triglycerides.
24 Sorry that --

25 Q. I'm sorry. Did you -- it was the monograph?

1 A. It appeared to me to be the monograph. What I
2 reviewed and what's in here, it's the monograph of
3 medium chain triglycerides that was in this -- this
4 particular 2003 EP that I cite to.

5 Q. EP is European Pharmacopeia?

6 A. Sorry. Yes.

7 Q. Okay. Do you know anything about the
8 composition of Vigantol oil other than as may have
9 been described in or mentioned in Harder and Wolfe?

10 A. I did not.

11 Q. You did not conduct any research into the
12 chemical -- the actual composition of Vigantol oil in
13 2003, for example?

14 A. Correct.

15 MS. PATEL: Objection. Foundation. Scope.

16 THE WITNESS: I did not.

17 BY MR. ANDERSON:

18 Q. Are you aware that Vigantol oil is not
19 available in this country or Canada?

20 MS. PATEL: Objection. Foundation. Scope.

21 THE WITNESS: I actually wasn't -- I just
22 hadn't looked. I don't -- I don't -- didn't know that.

23 BY MR. ANDERSON:

24 Q. Are you aware that Vigantol oil is only
25 available by prescription in certain countries in

1 Europe?

2 MS. PATEL: Objection. Foundation, scope,
3 relevance.

4 THE WITNESS: I read that in either Harder or
5 Wolfe.

6 BY MR. ANDERSON:

7 Q. Were you told by Fish & Richardson anything
8 about Vigantol oil other than what may be indicated in
9 your report, Exhibit 17?

10 MS. PATEL: Objection. Privileged.

11 Instruct the witness not to answer that
12 question.

13 BY MR. ANDERSON:

14 Q. Are you going to abide by your counsel's
15 instruction?

16 A. Yes.

17 MS. PATEL: I'll just object to the form of
18 the question.

19 BY MR. ANDERSON:

20 Q. I'm going to hand you what I've marked as
21 Exhibit 20. It's a copy of a document that is -- that
22 has on the lower right hand corner of the first page
23 MOM-1007, and it appears to be a declaration of
24 accuracy of translation. Appears to be dated February
25 28, 2003.

1 (Defendant's Exhibit 20 was marked for
2 identification.)

3 THE WITNESS: Thank you.

4 BY MR. ANDERSON:

5 Q. Please take a moment to look at Exhibit 20 and
6 tell me whether you've seen it previously.

7 A. It's the -- I've looked at -- I've reviewed
8 MOM-1007.

9 BY MR. ANDERSON:

10 Q. I am now going to hand you what I have marked
11 as Exhibit 21. This is a document that has Bates
12 number -- I've now marked the same document twice in
13 two different depositions. Oh, well. Apologies to
14 counsel.

15 Exhibit 21. It's marked in the lower right
16 hand corner, MOM-1021, and it is had a declaration of
17 translator and it is dated April 3 of 2017.

18 (Defendant's Exhibit 21 was marked for
19 identification.)

20 BY MR. ANDERSON:

21 Q. Do you recall having seen Exhibit 21
22 previously?

23 A. I believe this is the translation version that
24 I was provided in Exhibit 18 from 2017.

25 Q. And just so we're clear, when you say this,

1 you're referring to Exhibit 21?

2 A. Sorry. Yes, I am.

3 Q. Now, you describe it as the version?

4 A. No, I didn't. I just meant -- I -- I believe

5 Exhibit 21 is the translation that I was provided for

6 Harder to use and to consider in Exhibit 18.

7 Q. Did you use Exhibit 21 -- excuse me. Did you
8 use Exhibit 21, the Declaration of Translator dated
9 April 3, 2017, in connection with your work relating
10 to Exhibit 17, your 2023 opinion?

11 MS. PATEL: Objection. Privilege. Work
12 product.

13 Instruct the witness not to answer that
14 question.

15 BY MR. ANDERSON:

16 Q. Going to abide by your counsel's instruction?

17 A. Yes.

18 Q. Are you aware that there is a difference in
19 the translation between what's given in Exhibit 20
20 versus Exhibit 21?

21 MS. PATEL: Objection. Foundation.

22 THE WITNESS: I'm aware there's a difference.

23 BY MR. ANDERSON:

24 Q. What is the difference that you're aware of?

25 A. I'm aware in the Harder translation in Exhibit

1 20 that I was provided for my opinion in Exhibit 17
2 that there -- and Mr. Sherman explains it in Paragraph
3 3 on Page 1 of Exhibit 20, and there's an addition to
4 Page 4 of the translation, quote, To be licked off.
5 And so that is from a sentence. And on Page 6 of
6 Exhibit 20.

7 And it's -- so if you go down on page -- okay.
8 So the bottom numbered Page 6 of Exhibit 20, if you --
9 if you go down to just above option four there's a
10 paragraph that starts and it's bolded use, U-S-E, of
11 the oil is simple. And then one drop of Vigantol oil
12 is given to the baby to be licked off from the tip of
13 a spoon once a day before a breastfeed or a meal.

14 So I understand that that's a difference.

15 Q. Did you have any discussions with Fish &
16 Richardson concerning this addition of four words by
17 Mr. Sherman as indicated in Exhibit 20?

18 MS. PATEL: Objection. Privileged.

19 Instruct the witness not to answer.

20 BY MR. ANDERSON:

21 Q. Going to abide by your counsel's instruction?

22 A. Yes.

23 Q. The addition of the four words by Mr. Sherman,
24 did that make a difference in your opinion or in your
25 opinions as expressed in Exhibit 17?

1 MS. PATEL: Objection. Form.

2 THE WITNESS: Sorry. The difference from

3 what --

4 BY MR. ANDERSON:

5 Q. Different -- well, in 2017 you used Exhibit 21

6 as the translation of harder to reach your opinions,

7 correct?

8 A. Yes.

9 Q. And Exhibit 21, the original transcription

10 excuse me, the original translation of Harder to which

11 the translator says that it is a quote, True, full and

12 accurate translation, that does not include the four

13 words that Mr. Sherman added, correct?

14 A. It does not.

15 Q. Was it significant to your analysis in 2023

16 that Mr. Sherman had added those four words?

17 A. Yes, it was.

18 Q. And what was the significance from adding

19 those four words?

20 A. The significance is that in my review of

21 Exhibit 20, that the -- how it's described is that one

22 drop of Vigantol oil is given to the baby to be licked

23 off the tip of a spoon. So that provides direction to

24 this method of administration that the baby is to lick

25 off the drop that's been placed onto, in this case,

1 the surface is the tip of a spoon.

2 Q. Without that, those additional four words and
3 that direction, you would no not have reached the
4 specific opinions described in Exhibit 17, correct?

5 MS. PATEL: Objection. Foundation and Scope.

6 THE WITNESS: Well, I mean, I was only asked
7 to consider the Exhibit 20 as one of the prior
8 references, so -- which is what I did.

9 BY MR. ANDERSON:

10 Q. Well, you just said that those four words were
11 significant to you, correct?

12 A. They were, yes.

13 Q. Okay. Without those four words, you wouldn't
14 have been able to reach the conclusions that you state
15 or the opinions you state in Exhibit 17, would you,
16 sir?

17 MS. PATEL: Objection. Foundation.

18 THE WITNESS: Not the specific not the
19 specific opinion. Where I -- I use Harder as showing
20 that the drop of the Vitamin D or Vigantol can be
21 licked off of a surface.

22 BY MR. ANDERSON:

23 Q. Do you know how those four words came to be
24 added to Ms. Tinworth's translation in 2017?

25 MS. PATEL: Objection. Foundation.

1 THE WITNESS: I do not.

2 BY MR. ANDERSON:

3 Q. Do you know that those four words came to be
4 added after an attorney from Fish & Richardson
5 contacted the translation service and said -- and
6 expressed some dislike to the translation that Ms.
7 Tinworth had prepared?

8 MS. PATEL: Objection. Foundation. Form.

9 THE WITNESS: No.

10 BY MR. ANDERSON:

11 Q. If I told you that the instigation for the
12 addition of the four words was as a result of a phone
13 call from a Fish & Richardson attorney to the
14 translation service in 2017, would that cause you to
15 question the accuracy of the translation that you were
16 provided in Exhibit 20 at all?

17 MS. PATEL: Objection. Foundation, form,
18 scope, hearsay, and relevance.

19 THE WITNESS: I was given what I was told was
20 an accurate translation, and that's what I used in my
21 opinion.

22 BY MR. ANDERSON:

23 Q. Well, you were told that Exhibit 21 was an
24 accurate translation back in 2017, correct?

25 A. Yes. And I used that translation --

1 Q. And you used that --

2 A. -- in my opinion.

3 Q. All right. And, in fact, you did quote from
4 Exhibit 21 in connection with your work in Exhibit 17,
5 correct?

6 MS. PATEL: Objection. Foundation.

7 THE WITNESS: Wait. Sorry. Could you re --

8 MR. ANDERSON: Sure.

9 THE WITNESS: No, no.

10 BY MR. ANDERSON:

11 Q. You, in fact, quoted from Exhibit 21 in
12 connection with your work in Exhibit 17?

13 A. Can you -- I'm sorry. I don't know where that
14 is.

15 Q. Do you recall? I mean, is -- do you recall?
16 Is that a yes, no, or I don't recall?

17 A. I'd like you to point it to me.

18 Q. Can you answer my question first?

19 A. I don't have this memorized, and I'd like
20 to --

21 Q. All right.

22 A. -- see where you're pointing to.

23 Q. Sure. Let's go to Paragraph 59 of Page 23.
24 And you quote from Harder. You say Harder also
25 teaches how to administer Vigantol oil: Quote, one

1 drop of Vigantol oil is given to the baby from the tip
2 of a spoon once a day. Close quote.

3 Do you see that, sir?

4 A. But that's not -- I see it, but that's not --
5 I'm citing from MOM-1007.

6 Q. I understand that. But do you see -- you see
7 that quotation?

8 A. I see it.

9 Q. And there's no ellipses in that quotation, is
10 there?

11 A. There is not.

12 Q. And that is referencing and saying that that's
13 the quotation from Harder; do you see that?

14 A. Yes.

15 Q. And if we look at Exhibit 21, the 2017 true
16 and accurate and full translation by Ms. Tinworth on
17 page five, the paragraph that has in bold use of. You
18 see that?

19 A. Yes.

20 Q. And it says, quote, One drop of Vigantol oil
21 is given to the baby from the tip of a spoon once a
22 day. Close quote.

23 Do you see that?

24 A. Yes.

25 Q. That's the exact quote in Paragraph 59,

1 correct?

2 A. It is.

3 Q. And if we look at Exhibit 20, the changed
4 translation of Ms. Tinworth on Page 6, beginning at
5 the paragraph that you referenced earlier, use of. It
6 says, quote, One drop of Vigantol oil is given to the
7 baby to be licked off from the tip of a spoon once a
8 day.

9 Do you see that?

10 A. I do. Except this is Page 4. 4 is at the
11 top.

12 Q. Okay. Well, I was referring to Page 6 at the
13 bottom. It doesn't matter.

14 A. Okay.

15 Q. You see the translation, correct?

16 A. I do, yes.

17 Q. So the quotation in Paragraph 59 is not the
18 words that are in Exhibit 20, are they?

19 A. That's not the same quote.

20 Q. So did you use Exhibit 21 in connection with
21 your work?

22 A. I didn't. I did not.

23 Q. So is this just a mistake by Fish & Richardson
24 when they drafted your report, sir?

25 MS. PATEL: Objection. Foundation, form

1 privilege.

2 Instruct the witness not to answer.

3 BY MR. ANDERSON:

4 Q. You going to abide by your instruction?

5 A. Yes.

6 MR. ANDERSON: Do you want to take a break for
7 lunch now? I'm at a good stopping point.

8 MS. PATEL: Sure.

9 THE REPORTER: All right. We're going off the
10 record. The time is 12:14 p.m., Central Standard
11 Time.

12 (A recess was taken.)

13 THE REPORTER: All right. We are back on the
14 record. The time is 1:34 p.m., Central Standard Time.

15 Counsel, you may continue.

16 BY MR. ANDERSON:

17 Q. Dr. Williams, do you understand that you're
18 still under oath?

19 A. I do.

20 Q. And during our lunch break, did you discuss
21 your testimony with counsel at all?

22 A. No, I did not.

23 Q. Could you turn to Page 19 of your report, sir,
24 in Exhibit 17?

25 A. Okay.

1 Q. Are you there?

2 A. Yes.

3 Q. In Paragraph 49, you have a quotation from
4 European Pharmacopeia Supplement 4.3, and then you
5 have a -- I'm sorry. The first quotation is from the
6 958 patent. And then on the top of Page 20, you have
7 a quotation from European Pharmacopeia.

8 Do you see that?

9 A. I do.

10 Q. And you say that those two quotations appear
11 similar. Do you see that?

12 A. Yes.

13 Q. What, if any, is the significance or
14 importance of that alleged similarity?

15 A. Oh, the significance to my opinion is
16 recognizing that from MOM-1010 from the European
17 Pharmacopeia excerpt is the monograph for medium chain
18 triglycerides, that that was known to a skilled
19 person, and that was similar to the wording that's --
20 that I cite in from the 958 patent.

21 Q. Did you notice the similarity in making
22 revisions to the draft report, or is this a similarity
23 that was provided to you in the first instance by
24 counsel at Fish & Richardson?

25 MS. PATEL: Objection. Privileged.

1 Instruct the witness not to answer that.

2 BY MR. ANDERSON:

3 Q. Are you going to abide by your counsel's
4 instruction, sir?

5 A. Yes.

6 Q. Turning to Paragraph 50 on Page 20, sir, you
7 begin by having a statement about four lines down. It
8 says, In my opinion, the 958 patent recognizes, and
9 then it goes on from there.

10 Do you see that, sir?

11 A. Yes.

12 Q. Why did you insert that -- those two
13 statements regarding the 958 patent?

14 A. So I'm talking about the medium chain
15 triglycerides, particularly the carbon chain link and
16 adhering. And my point here is that the adhering of
17 the -- of the liquid to a surface or of an object,
18 it's related to the viscosity. And I point that out
19 in that the patent realized recognizes that as well
20 from one of the examples that I cite here. That was
21 my point.

22 Q. And you would agree, would you not, that
23 liquids of different viscosities may or may not adhere
24 to surfaces of different types?

25 A. That's -- that's probably true.

1 Q. I mean, viscosity does not equal adherence.

2 A. I think viscosity -- I mean, if it's higher --
3 high viscosity, it -- it -- from my experience, the
4 liquid would adhere if it's high viscosity. So here
5 my point is that, you know, the patent is recognizing
6 that the adherence is related to viscosity because it
7 mentions it. And that I think a skilled person would
8 recognize it.

9 Q. Well, for example, if you had something that's
10 a very viscous liquid such as honey, it may not -- it
11 would not necessarily adhere to what I would call a
12 very slick surface such as Teflon, would it?

13 MS. PATEL: Objection. Foundation. Scope.

14 THE WITNESS: I don't know if honey would.

15 BY MR. ANDERSON:

16 Q. You would agree that viscosity requires both a
17 liquid and an object to determine whether it adheres?

18 A. Viscosity --

19 Q. Requires a liquid and an object for adherence.

20 MS. PATEL: Objection. Foundation. Scope.

21 THE WITNESS: Yeah, I don't really understand
22 your question. Well have a question. Bad question.
23 Bad question.

24 BY MR. ANDERSON:

25 Q. To determine adherence you have to have two

1 things, don't you? You've got to have the liquid and
2 you've got to have what it's being adhered to? Two
3 things.

4 MS. PATEL: Objection. Form.

5 BY MR. ANDERSON:

6 Q. The liquid and the substance for the
7 adherence?

8 MS. PATEL: Objection to form.

9 THE WITNESS: I mean, in this context, I mean,
10 what I'm talking about in Paragraph 50 is that the
11 patent recognizes that the liquids of this invention
12 of the 958, are sufficiently viscous so that, you
13 know, it says one drop does not immediately drip or
14 roll away.

15 So here you have -- you have a liquid that has
16 a certain viscosity such that it has sufficient -- so
17 that one drop doesn't drop or roll away. So and
18 that's from a surface because this is -- this isn't
19 one of the examples that uses a pacifier as the
20 surface in the experiments.

21 BY MR. ANDERSON:

22 Q. Does the 958 patent provide any indication of
23 what is the sufficient viscosity necessary?

24 MS. PATEL: Objection. Form. Foundation.

25 THE WITNESS: Well, I mean, the 958 patent

1 says that the measure of sufficient viscosity is that
2 one drop does not immediately drip or roll away. So a
3 skilled person would understand that you can test
4 whether it has efficient viscosity by putting one drop
5 on a surface and then measuring whether it drips off
6 or rolls away.

7 BY MR. ANDERSON:

8 Q. So the person of ordinary skill in the art
9 would have to do some testing to determine what the
10 break in viscosity was; is that correct?

11 MS. PATEL: Objection. Form. Foundation.

12 THE WITNESS: Well, I mean, if a skilled
13 person is -- if they don't know whether a particular
14 liquid is -- has sufficient viscosity to not drip or
15 roll away, I mean, you'd have to -- you'd have to
16 figure that out. You'd have to test it.

17 BY MR. ANDERSON:

18 Q. Yeah, because Table 1 is testing, in effect,
19 viscosity in the 958 patent?

20 MS. PATEL: Objection to form.

21 THE WITNESS: Well, I mean, Table 1 is --
22 is -- it's not testing viscosity. It's testing the
23 effect of being sufficiently viscous. So it runs
24 through, I don't know, several different types of
25 liquids, aqueous and different -- different oils,

1 ethanol. And then it's measuring whether it drips off
2 or it says adheres, which I understand to not drip
3 off. So...

4 BY MR. ANDERSON:

5 Q. So have you tested adherence of any of the
6 various compounds that you've mentioned in your
7 report?

8 MS. PATEL: Objection. Relevance. Scope.

9 THE WITNESS: I have not.

10 BY MR. ANDERSON:

11 Q. The portion of Exhibit 50, it says in my -- it
12 begins, In my opinion, that we just have been looking
13 at.

14 A. Paragraph 50?

15 Q. Yes, sir. Paragraph 50 in Exhibit 17. Was
16 that lower part of that paragraph your words in the
17 first instance, or were those words that were provided
18 to you in the first instance by one of the attorneys
19 at Fish & Richardson?

20 MS. PATEL: Objection. Privileged.

21 Instruct the witness not to answer that
22 question.

23 BY MR. ANDERSON:

24 Q. Are you going to abide by your counsel's
25 opinion -- or excuse me, instruction?

1 A. Yes.

2 Q. Could you define viscosity for me, sir?

3 A. Viscosity? It's a -- it's the -- it's a
4 measurement of the sheer of a material, typically a
5 liquid or semi solid, using like -- there's several
6 different ways to measure. A rheometer or a
7 viscometer.

8 Q. Okay. And with regard to adherence in
9 Paragraph 50, could you define what you mean by
10 adherence in Paragraph 50 of Exhibit 17, sir?

11 A. Well, I'm -- adherence is used in the 958
12 patent. My understand is adherence from the 958
13 patent is they're describing adherence as a property
14 of whether it -- whether that single drop will drip
15 off or roll away? That's my understanding from the
16 958 patent.

17 Q. So are you saying that the inventors of the
18 958 patent were their own lexicographers in terms of
19 defining adherence?

20 MS. PATEL: Objection. Foundation, form,
21 relevance.

22 THE WITNESS: Well, I don't remember like
23 saying adherence means this, so particularly defining
24 it. So I'm reading the context of how they -- how
25 well in this particular example, how they're using the

1 word adherence. That's how I'm gaining I understand
2 it. All right.

3 BY MR. ANDERSON:

4 Q. Then separate and apart from the 958 patent,
5 is there what I'll call a great -- a commonly accepted
6 definition for adherence in your community, scientific
7 community, or area of expertise?

8 A. Probably not that I'm aware of.

9 Q. Okay. In Paragraph 51, sir, you start off by
10 referencing what a person of ordinary skill in the art
11 you believe would understand from Table 1 of the 958
12 patent.

13 Do you see that?

14 A. I do.

15 Q. And then you go and say, based on that
16 starting point for the POSITA that they would
17 understand that they were -- and you go on attempting
18 to demonstrate that water based preparations, et
19 cetera from there.

20 Do you see that?

21 A. Yes.

22 Q. And then you say the applicants conducted
23 experiments to demonstrate that the quote vehicles for
24 Vitamin D, close quote, listed in Table 1 had
25 sufficient viscosity such that they will adhere to the

1 surface of an object.

2 Do you see that?

3 A. Yes.

4 Q. Can you I think you have an exhibit, the
5 patent. Can you tell me where that is in the patent?

6 A. Where they're measure -- doing the
7 measurement?

8 Q. Where they're -- yeah, conducted experiments.

9 A. Oh, yeah. So it's an example. It's Example
10 1, Column 6, starting like Line 34.

11 Q. Okay. Going to Paragraph 52, sir, you know,
12 state, quote, For a drop of Vitamin D to be delivered
13 to an infant in the manner described in the 958
14 patent, it needs to be combined with a carrier vehicle
15 that will make it sufficiently viscous to adhere to an
16 object. The applicants appear to suggest that they
17 discovered that medium chain triglycerides satisfy
18 this criterion, whereas water and ethanol would drip
19 off.

20 Do you see that, sir?

21 A. I do.

22 Q. It's true, is it not, sir, that in the patent
23 the applicants or inventors describe testing that they
24 did to determine what solution, what vehicle was
25 sufficiently viscous to adhere to an object?

1 MS. PATEL: Objection. Foundation. Form.

2 THE WITNESS: Example one in the 958 patent,
3 the inventors are doing an experiment that's explained
4 here. Testing different liquids. And they describe
5 it starting Line 49, placing one drop, they say onto a
6 nipple, but it's a pacifier because that's clarified
7 in Column 7 in around line like 24, 25. And then they
8 measure it for 10 seconds to see if they observe the
9 drop -- dripping off. So that's the experiment
10 they're doing in different carrier liquids.

11 BY MR. ANDERSON:

12 Q. Okay. You then go on. You say, quote, As I
13 explained further below in my declaration, this
14 property was already known in Harder, and it goes on
15 from there.

16 Do you see that, sir?

17 A. Yes.

18 Q. The antecedent for this property, what you are
19 referring to is that medium chain triglycerides are
20 sufficiently viscous to adhere to an object; is that
21 correct?

22 A. That's what I'm explaining related to Harder's
23 description of the infant licking off from this -- the
24 tip of a spoon.

25 Q. Looking at the translation of Harder, Exhibit

1 20 or 21, can you point out to me where in Harder it
2 discloses that medium chain triglycerides are
3 sufficiently viscous to adhere to an object?

4 A. Oh, so Harder describes on Page 4 using the
5 top page number.

6 Q. And just so the record is clear, which exhibit
7 are you looking at, sir?

8 A. Sorry. I'm looking at Exhibit 20.

9 Q. All right.

10 A. Which is what I considered here in my Exhibit
11 17. So if you go down about three quarters of the
12 way, it starts, Use of the oil is simple. One drop of
13 Vigantol oil is given to the baby to be licked off
14 from the tip of a spoon once a day.

15 So in my opinion, a skilled person would
16 understand that the Vigantol oil is -- it's viscous
17 enough that it's going to -- that drop is going to
18 stick onto the spoon to allow it to be presented to
19 the baby to then be licked off. That's my opinion.

20 Q. Okay. So your opinion is that what you just
21 referenced is the location in Harder where it
22 discloses that medium chain triglycerides are the
23 carrier vehicle that makes it sufficiently viscous to
24 adhere to an object?

25 A. Well, being -- I mean Harder up above? -- so

1 on same Page 4, using the top page number, under
2 Option 3, Harder described Vigantol oil. Says one
3 drop contains 500 IUs. That's of item in D3. Can
4 also be recommended into tablets. The oil has proved
5 to be successful, let's see, over many years, and
6 contains only one excipient as a vehicle for the fat
7 soluble, Vitamin D, namely medium chain triglycerides.
8 And then it lists in parentheses vegetable oil.

9 So there's -- that's the carrier, according to
10 Harder, for Vigantol. There's one single vehicle
11 liquid, and that's medium chain triglycerides.

12 Q. Okay. But where -- and I think you referred
13 to the first sentence in the second paragraph from the
14 bottom on Page 4 of Exhibit 20, that's where, in your
15 opinion, it discloses that medium chain triglycerides
16 are the carrier vehicle that makes it sufficiently
17 viscous to adhere to an object.

18 A. Well, I mean, reading Harder and considering
19 the entire the whole document here regarding or
20 related to Vigantol oil, Harder says what the one
21 ingredient -- the excipient is, which is medium chain
22 triglycerides. And then goes below and says that one
23 drop or its use, a simple one drop is given to a baby
24 to be licked off from the tip of a spoon.

25 So in my opinion, a skilled person would

1 understand that the medium chain triglycerides is the
2 vehicle. It is -- it has properties, viscosity that
3 allows it to stay on that tip of the spoon long enough
4 for that to be presented to the baby and the baby lick
5 it off.

6 Q. When you're taking -- first off, when you say
7 the tip of a spoon, do you mean literally the tip that
8 it sits there like a drop on the tip, or is it in the
9 bowl?

10 A. I mean, I understand that to be on the tip, on
11 the very tip.

12 Q. So what I'll call the very edge of the -- the
13 front edge of a spoon?

14 A. I mean, Harder describes it as tip of the
15 spoon. So it would be -- I mean, whatever -- it's the
16 surface of the spoon, whatever is going to facilitate
17 delivery to the baby.

18 Q. Well --

19 A. I understand it to be at the at the very tip.

20 Q. Yes. And I'm trying to understand when you
21 say at the very tip, what you're referring to. What
22 are you referring to when you say very tip, because I
23 have this image of a spoon, typical spoon. It's got a
24 concave portion, a convex portion, and there's a edge
25 around there.

1 A. I mean --

2 Q. Putting it on the tip of the spoon is right on
3 the edge?

4 A. I mean, I won't -- it doesn't seem like it
5 would matter whether it's on the curved part or the
6 convex part or the concave part as long as it's on the
7 tip of the spoon. It's a surface. So whatever would
8 facilitate the baby once it's presented to the baby to
9 lick off.

10 Q. Well, I guess I -- and I don't mean to keep
11 going around, but I'm trying to understand when you
12 say tip of the spoon, what you are envisioning?
13 Because I envision tip of the spoon to be the, you
14 know, what I'll call the intersection of the concave
15 portion in the convex portion. And you seem to be
16 saying, well, if it's just in the front part of the
17 concave portion of the front part of the convex
18 portion. That's close enough.

19 MS. PATEL: Objection. Form.

20 THE WITNESS: Well, I mean, Harder says tip of
21 the spoon. I understand it to be on the end of the
22 spoon, that the -- you know, I don't know what percent
23 end. It's the tip if you -- if you instructed someone
24 to administer a drop. But and it wouldn't matter to
25 me whether it's -- it's on the tip at the convex or

1 concave. It's still the surface. It'd be whatever
2 facilitates, again, presentation of the single drop on
3 that spoon or the tip of the spoon to the baby to be
4 licked off.

5 BY MR. ANDERSON:

6 Q. Okay. Now, in Paragraph 52, you're talking
7 about you -- you're referencing to lick off. Do you
8 see that in the last --

9 A. Yes.

10 Q. Okay. Is this if the translation that you
11 used was the translation that you used in 2017,
12 Exhibit 21, which does not contain the words to be
13 licked off, you wouldn't be able to make that
14 conclusion that you have in Paragraph 52 of your 2013
15 declaration, correct?

16 MS. PATEL: Objection. Foundation. Form.

17 THE WITNESS: I would not. I would not be
18 able to make that particular argument with regarding
19 the licking off.

20 BY MR. ANDERSON:

21 Q. Okay. In Paragraph 53, sir, you say possessed
22 the properties needed to adhere to the service of an
23 object. Do you see that?

24 A. Yes.

25 Q. Any object?

1 A. Well, I mean, Claim 1 of the 958 says an
2 object. So that would mean to a skilled person and
3 not an object that would be suitable for delivery
4 to -- to an infant, a baby or a child. So...

5 Q. And if we go to Paragraph 54 on the next page,
6 sir, you say, quote, In my opinion, a person of
7 ordinary skill would have recognized that the internal
8 quote, medium chain triglycerides, paren, vegetable
9 oil, close internal quote, taught by Harder would be
10 sufficiently viscous to adhere to the service of an
11 object, paren. E.g. nipple, close paren, period.

12 Do you see that, sir?

13 A. Yes.

14 Q. And again, just so I'm clear, the source for
15 that, in your opinion, from Harder, is the line that
16 you referenced or the sentence that you referenced
17 that begins with use of the oil is simple on Page 4
18 numbered at the top of Exhibit 20, correct?

19 A. Yes.

20 Q. Is vegetable oil a medium chain triglyceride?

21 A. I mean, I think there's -- there's different
22 types of vegetable oils. It just depends on what
23 the -- if it meets the limitations for the caprylic
24 and capric acid levels and the -- you know, the CA
25 plus C10 being not less than 95 percent, it could be.

1 Q. You don't -- I mean, Harder does not identify
2 the type of vegetable oil that is referenced in a
3 parenthetical, correct?

4 A. Oh, no. I think a skilled person would
5 understand Harder does. Harder as I understand this,
6 that vegetable oil has to meet the medium chain
7 triglyceride levels of CA and C10.

8 Q. Have you done any testing of various vegetable
9 oils to determine which ones are medium chain
10 triglycerides?

11 A. I have not.

12 Q. You didn't do any of that in connection with
13 Exhibit 17, correct?

14 A. I did not.

15 Q. In paragraph 58 on Page 22 you talk about what
16 Harder says. Here you say quote, Harder discloses
17 that Vigantol oil is a Vitamin D product that can be
18 administered to children. Close quote.

19 Do you see that, sir?

20 A. Yes.

21 Q. And I am correct, am I not, that the use of
22 Vigantol oil disclosed in Harder is for a special case
23 or the special case of an infant who is susceptible to
24 allergies or bloating after taking tablets, correct?

25 A. I mean, it's -- Harder says under option three

1 in the case of children who are susceptible to
2 allergies or where increased bloating is experienced
3 after taking the tablets, Vigantol oil can also be
4 recommended instead of the tablets.

5 Q. Yes. It's for those special cases, correct?

6 MS. PATEL: Objection. Foundation.

7 BY MR. ANDERSON:

8 Q. In the case of children who are susceptible to
9 allergies or where increased bloating is experienced
10 after taking the tablets?

11 MS. PATEL: Objection. Foundation.

12 BY MR. ANDERSON:

13 Q. That's correct, isn't it?

14 A. Well, I'm reading. Hold on.

15 MS. PATEL: Objection. Foundation.

16 THE WITNESS: I mean, I -- I think a -- I
17 understand it as a person of ordinary skill in the
18 art, that Vigantol oil is something else that could be
19 recommended in the case where children are susceptible
20 to allergies or where increased bloating is
21 experienced. So I don't read that as it's just
22 limited to the cases where children are experiencing
23 that susceptible to allergies or bloating.

24 BY MR. ANDERSON:

25 Q. Where in Harder does it disclose that you

1 could or should use Vigantol oil as described in

2 Option 3 on a year-round basis for any child?

3 MS. PATEL: Objection. Foundation. Scope.

4 THE WITNESS: Yeah. I actually didn't -- I

5 wasn't asked to really consider that question, so I

6 haven't -- I hadn't really considered it.

7 BY MR. ANDERSON:

8 Q. Well, option one on the previous page of

9 Exhibit 20 talks about administering a daily Vitamin D

10 tablet. Do you see that?

11 A. I see it. It's all under four options for the

12 prophylaxis of rickets, yes.

13 Q. And Option 1, which is headed year-round

14 substitution with a daily Vitamin D tablet containing

15 500 IU. Do you see that?

16 A. Yes.

17 Q. So that's an option, the first option for

18 prophylaxis of rickets is a daily Vitamin D tablet,

19 correct?

20 A. I mean, that's -- that is what is bolded and

21 described in Option 1.

22 Q. Okay. And then Option 2 is a daily dose of

23 Vitamin D tablets and two hours of light a day in the

24 winter; you see that?

25 A. I do, yes.

1 Q. Okay. And Option 3, the case of children who
2 are susceptible to allergies or bloating contains, in
3 the last two paragraphs, warnings regarding the use of
4 Vigantol oil. Do you see that?

5 A. Well, I don't -- I don't understand that as a
6 warning. I mean, in -- at the end of Option 3 it
7 says -- it says in my experience -- so that's Harder.
8 In my experience, skeptical parents are more likely to
9 be accepting of administering drops on a daily basis
10 than a daily dose of tablets.

11 So I mean that -- I understand that to mean
12 it's not just limited to children who are susceptible
13 to allergies or increased bloating.

14 Q. Well, Harder indicates or warns people that
15 there's a risk of overdose if Vigantol oil is not used
16 properly, correct?

17 MS. PATEL: Objection. Scope.

18 THE WITNESS: I mean, Harder -- you know,
19 again, I wasn't really asked to have an opinion on
20 that particular aspect of Harder. But Harder states
21 on Page 4, under Option 3, it says Vigantol oil is a
22 prescription-only medicine as there is a risk of an
23 overdose if it's not used properly.

24 BY MR. ANDERSON:

25 Q. Well, your opinion, correct me if I'm wrong,

1 is that Harder discloses use Vigantol oil or Vigantol
2 oil, an MCT, namely, vegetable oil is sufficiently
3 viscous to adhere to an object. So use it all the
4 time. That's your opinion, right?

5 A. Well, yeah, but that's -- like I don't
6 understand your question with that aspect related to
7 its prescription-only medicine. There's a risk of an
8 overdose. Because it goes down to say, use of the oil
9 is simple. So it's giving instructions of how to use
10 it in a manner that, you know, to administer to a
11 baby.

12 Q. Well, but after that sentence about where it
13 says simple, Ms. Harder states, quote under no
14 circumstances should it be put directly in the baby's
15 mouth, exclamation point. Should two drops fall onto
16 the spoon, the spoon should be washed and the process
17 started again. Close quote.

18 Isn't she making it clear that the use of
19 Vigantol oil is only in special cases and should be
20 used incredibly carefully to ensure that there is no
21 overdose?

22 MS. PATEL: Objection. Foundation. Form.

23 THE WITNESS: Yeah. I mean, I don't read it
24 where it's -- where as a person of ordinary skill in
25 the art where it's -- it's -- wait. Sorry. What was

1 your question? I don't remember the first part.

2 MR. ANDERSON: Will you --

3 THE REPORTER: Yeah, I'll play it back.

4 MR. ANDERSON: Thank you.

5 THE REPORTER: Give me one second.

6 MR. ANDERSON: Yeah.

7 (The requested question was played back.)

8 THE WITNESS: I mean, I understand that to be

9 part of the instructions of when and how to use

10 Vigantol oil. So it's -- that's how I understand it.

11 BY MR. ANDERSON:

12 Q. Would you agree with me, sir, that Harder

13 teaches that one should be very careful in

14 administering Vigantol oil?

15 MS. PATEL: Objection. Foundation.

16 THE WITNESS: I mean, I think I understand

17 this Harder is in the description of Vigantol oil.

18 Harder is explaining that there is like all medicines.

19 There is a risk and you have to use it correctly. So

20 I mean, I understand that from -- from this

21 description on Vigantol oil that Harder describes

22 here.

23 BY MR. ANDERSON:

24 Q. Given that the first two options described in

25 Harder, Option 1 and Option 2 are limited to the use

1 of tablets, and Option 3 is described as a case where
2 children who are susceptible to allergies and
3 increased bloating and that requires very careful use.
4 Doesn't that teach a way for a person of ordinary
5 skill in the art for using Vigantol oil as the
6 carrier, generally speaking, for administering vita
7 and or giving vita and to infants or children?

8 MS. PATEL: Objection. Foundation, form,
9 scope.

10 THE WITNESS: Well, Vigantol oil is not the
11 carrier. That was in their --

12 BY MR. ANDERSON:

13 Q. Correct. The CI -- CI apologize.

14 A. Yeah.

15 Q. It's the MCT.

16 A. Yeah. I don't know. A clinician. You're
17 asking more of a clinician question, and I don't --
18 it's really -- I don't know how a clinician would
19 understand that.

20 Q. How would a POSITA, a person of ordinary skill
21 in the art understand it?

22 A. I'd have to go ask a physician if it was me.
23 So...

24 Q. Okay. Starting with Paragraph 61 in your
25 report, you discuss Wolfe. You see that?

1 A. Yes.

2 Q. Okay. Hand you, sir, a document that I've
3 marked as Exhibit 22.

4 (Defendant's Exhibit 22 was marked for
5 identification.)

6 THE WITNESS: Thank you.

7 BY MR. ANDERSON:

8 Q. In the lower right hand corner it says
9 MOM-1009. It appears to be a declaration of
10 translator attached to which is what appears to be a
11 translation of a German medical text. And if you go
12 to Page 6 of the exhibit there is something that
13 appears to be by someone named H. Wolfe.

14 Do you recognize Exhibit 22 as the Wolfe
15 reference that you are referencing beginning in
16 Paragraph 61 of your Exhibit 17?

17 A. Yes, I do.

18 Q. What were you told, if anything, about the
19 significance of the Wolfe reference when you were
20 provided it by Fish & Richardson?

21 MS. PATEL: Objection. Privileged.

22 Instruct the witness not to answer.

23 BY MR. ANDERSON:

24 Q. Are you going to abide by your counsel's
25 instruction?

1 A. Yes.

2 Q. The translation or Wolfe reference, you
3 wouldn't consider that an article, would you, or a
4 research article?

5 MS. PATEL: Objection. Form.

6 THE WITNESS: I mean, I would as I think of a
7 research article, this would not be a research
8 article.

9 BY MR. ANDERSON:

10 Q. By the way, looking back at Harder either
11 translation, does the word "adherence" appear in that
12 translation anywhere?

13 A. I don't believe it does.

14 Q. How about "viscosity"?

15 A. I don't believe it does.

16 Q. Does adherence or any discussion of adherence
17 appear anywhere in the Wolfe reference?

18 A. No, it doesn't.

19 Q. Does viscosity appear anywhere in the Wolfe
20 reference?

21 MS. PATEL: Objection. Form.

22 THE WITNESS: I don't believe the word
23 viscosity appears in the Wolfe cite.

24 BY MR. ANDERSON:

25 Q. Does Wolfe contain any reference to having an

1 infant or child lick something off of an object?

2 A. From my opinion, it doesn't no.

3 Q. Wolfe is comparing Vitamin D preparations that
4 are in tablet form and drop form, correct?

5 MS. PATEL: Objection. Form.

6 THE WITNESS: I mean, Wolfe lists products
7 from Table 1 and Table 2, that Table 1 is -- it's
8 titled or the caption says prophylaxis of rickets in
9 babies and small children with pure Vitamin D3
10 preparations. I understand that to mean that it
11 it's -- the active is Vitamin D3. And then in Table 2
12 it compares it to products. And the figure caption is
13 prophylaxis of rickets in babies and small children
14 with vitamin preparations containing Vitamin D2 or D3.

15 So it's comparing, like, multiple active
16 ingredient versus Vitamin D3 preparations that I
17 understand, don't contain any other active. And so it
18 has both liquids that are it looks like they're
19 administered in droplet form. When it says that on
20 the right hand column above Table 1 and Table 2, it
21 says daily dose, and then it has tablets.

22 And then in the Table 2 that's the vitamin
23 preparations that contain Vitamin D2 or D3. It also
24 has, like, a teaspoon, which I understand you can
25 pulverize the tablets or somehow put them in a liquid

1 and take it, convert the solid tablet into like a
2 suspension form liquid that can be administered and
3 swallowed by the babies and small children.

4 BY MR. ANDERSON:

5 Q. But with regard to Table 1, which involves
6 Vitamin D3 preparation, the doses are either drops or
7 tablets, correct?

8 A. Yes.

9 Q. And if you go to the previous page at the
10 bottom labeled Page 7, the last line says, quote,
11 Drops or tablets should not be added to the bottle,
12 but administered to the baby on a spoon with some
13 liquid.

14 Do you see that?

15 A. Yes.

16 Q. And that is referring to use of D3 in the
17 context?

18 A. Yeah, that -- that's true. It is.

19 Q. Okay. And so it's saying put a drop or a
20 tablet on a spoon with some liquid, correct?

21 A. That's how I would -- that's how a POSA would
22 understand that in my opinion, sure.

23 Q. And then at the top of Page 9, Wolfe
24 references and he says, The commercially available
25 pure Vitamin D3 preparations, Vigantoletten and

1 Vigarson (phonetic) D3 are most suitable for the type
2 of rickets prophylaxis that is reported here, paren
3 Table 1. Close paren.

4 Do you see that?

5 A. Yes.

6 Q. And Vigantoletten and Vigarson are both tablet
7 products, correct?

8 A. That is what Table 1 says, yes.

9 Q. Okay. I'm going to hand you, sir, what I've
10 marked as Exhibit 23.

11 (Defendant's Exhibit 23 was marked for
12 identification.)

13 THE WITNESS: Thank you.

14 BY MR. ANDERSON:

15 Q. It appears to be an excerpt from the journal
16 Pain from December 1999, and there's an article by an
17 Elliott M. Blass and Lisa B. Watt from the Department
18 of Psychology and the Department of Pediatrics at
19 University of Massachusetts and Boston Medical Center,
20 respectively.

21 Do you recognize Exhibit 23 as the Blass
22 reference that you discussed beginning at Paragraph
23 65?

24 A. I do, yes.

25 Q. Blass did not teach anything about viscosity

1 or adherence, correct?

2 MS. PATEL: Objection. Foundation.

3 THE WITNESS: I don't know understand the
4 concept of viscosity to be discussed in Blass.

5 BY MR. ANDERSON:

6 Q. Okay. How about adherence?

7 A. I mean, to the extent that -- that they --
8 when they're studying the sucrose solution, I think
9 it's a 12 percent sucrose solution. By dipping it
10 into dipping it into, the pacifier into the 12 percent
11 sucrose solution, a skilled person would understand
12 there's enough residual sucrose solution that remains
13 so it's adhering onto the pacifier in order -- enough
14 time to be able to test that in the children that they
15 were testing it in. So...

16 Q. Well, isn't Blass simply saying if you
17 distract the infant by sucking on something that
18 happens to be sweet and you distract them long enough
19 while they're getting this heel lance procedure, they
20 aren't going to cry or be as upset as if they weren't
21 given something to suck on?

22 A. Right. But your question was is there a
23 concept of -- or is adherence discussed. And I'm
24 saying a skilled person, if they would understand that
25 when that pacifier is dipped in the 12 -- I think it's

1 12 percent sucrose solution, enough has to stick on
2 there in order to try to separate out the, you know,
3 the sucking reflex that's -- that will mask the pain
4 versus sweet plus the sucking. That -- that's my
5 understanding of what Blass was trying to do.

6 Q. Well, you don't know whether the it's simply
7 the sucking reflex action of an infant. Could be
8 sucking on just a plain old pacifier that would
9 distract the infant.

10 A. Well, that's the purpose of their study.

11 Q. There's no discussion of if you dip this thing
12 in -- this pacifier in a, you know, cup full of this
13 sucrose solution, that some amount of the sucrose
14 adheres to the pacifier, correct? There's no
15 discussion of how -- this is how much sucrose adheres?

16 A. Oh, yeah. No. I don't understand. They
17 didn't describe an amount. They just described that
18 it's enough to -- for them, it's enough to separate
19 out sweet plus sucking versus just sweet by
20 administering just the solution itself into the mouth.

21 Q. There is nothing in Blass that teaches or
22 suggests to a POSITA have the infant suck for this
23 period of time in order to get a nutritional
24 efficacious dose of whatever is on the pacifier,
25 correct?

1 MS. PATEL: Objection. Foundation, form, and
2 scope.

3 THE WITNESS: I did not. That'd probably be a
4 question for a clinician that I would have to ask if
5 it was relating efficacious something with sucrose,
6 but I'd have to ask a physician.

7 BY MR. ANDERSON:

8 Q. I mean, you didn't consider that as being
9 disclosed in Blass, correct?

10 MS. PATEL: Objection. Form. Foundation.

11 BY MR. ANDERSON:

12 Q. Sorry. You didn't consider that as being
13 disclosed in Blass, correct?

14 A. What's that?

15 Q. What you just -- what we just talked about.
16 How long an infant needs to suck on a pacifier to get
17 an efficacious dose of whatever you've dipped it in.

18 MS. PATEL: Objection. Foundation, form,
19 and --

20 BY MR. ANDERSON:

21 Q. And by efficacious, I mean a nutritionally
22 therapeutic amount.

23 MS. PATEL: -- privilege.

24 Instruct the witness not to answer that
25 question.

1 BY MR. ANDERSON:

2 Q. Going to abide by your counsel's instruction?

3 A. Yes.

4 Q. Is there any disclosure or suggestion in Wolfe
5 that teaches, suck this long and you'll get a
6 nutritionally sufficient dose of Vitamin D3?

7 A. I reviewed it. I would have to ask a
8 clinician about whether it's an efficacious dose. As
9 a POSA, I don't -- in my definition, I don't think
10 they would know that. They would have to ask part of
11 the team.

12 Q. And that would also be true of Harder.
13 There's nothing in Harder that discloses or teaches
14 suck this long and you get an efficacious or
15 nutritionally sufficient dose of Vitamin D3, correct?

16 MS. PATEL: Objection. Form. Scope.

17 THE WITNESS: Yeah. I would have to ask a
18 clinician about that, efficacious it is.

19 BY MR. ANDERSON:

20 Q. Yeah. It's not disclosed in Harder or
21 suggested in Harder, is it?

22 MS. PATEL: Objection. Foundation.

23 THE WITNESS: Well, okay. It being the
24 efficacious, dose?

25 BY MR. ANDERSON:

1 Q. Yes. How long to suck to get an efficacious
2 or nutritionally sufficient dose of Vitamin D3 off an
3 object?

4 MS. PATEL: Objection. Foundation and
5 relevance and scope.

6 THE WITNESS: Yeah. I mean, Harder is licking
7 off the tip of a spoon. So it's not sucking as I
8 understand it. So but I didn't -- I didn't really
9 consider the efficacious part.

10 BY MR. ANDERSON:

11 Q. And the licking off the spoon is only in the
12 second translation that you were given in 2023? It's
13 not in the first translation from 2017, correct?

14 MS. PATEL: Objection. Relevance.

15 THE WITNESS: That -- that's true.

16 BY MR. ANDERSON:

17 Q. And Harder doesn't teach or suggest how many
18 licks it takes of the spoon to get a nutritionally
19 efficacious dose of Vitamin D, does it?

20 MS. PATEL: Objection. Relevance. Scope.

21 THE WITNESS: I don't know. I would have to
22 ask a clinician about whether how many licks or what
23 licking would be understood with regards to
24 efficacious dose.

25 BY MR. ANDERSON:

1 Q. I mean there's nothing in Harder that says
2 lick -- have to make sure the infant licks five times
3 off the tip of this spoon, correct?

4 MS. PATEL: Objection. Relevance. Scope.

5 THE WITNESS: I mean, I would have to ask a
6 clinician.

7 BY MR. ANDERSON:

8 Q. Well, just looking at Harder, is there
9 anything in hard in Harder? There's nothing in
10 Harder, is there, that says put a drop on the spoon.
11 And then assuming it says -- that you use the second
12 translation that says to be licked off. It doesn't
13 say look it once, lick it twice, lick it five times,
14 look at 10 times, or just lick and lick and lick until
15 you can't feel anything?

16 MS. PATEL: Objection.

17 BY MR. ANDERSON:

18 Q. Right? It's not in there.

19 MS. PATEL: Form. Relevance.

20 THE WITNESS: It just says licking off the tip
21 of the spoon, yeah, is what it says.

22 BY MR. ANDERSON:

23 Q. So the answer to my question is that Harder
24 does not teach how many licks you need to make?

25 MS. PATEL: Objection. Foundation.

1 THE WITNESS: I mean Harder says licking off
2 the tip of the spoon. I would have to ask a clinician
3 how -- what their understanding is with regards to an
4 efficacious dose. I don't know.

5 BY MR. ANDERSON:

6 Q. Okay. And just so we're clear, when you say
7 referring to a clinician, who do you mean?

8 A. A medical doctor or a nurse practitioner or
9 somebody that treats, you know, the -- is prescribing
10 the Vitamin D3.

11 MR. ANDERSON: Okay. Could you turn to
12 Paragraph 77 of your report, sir, Exhibit 17. And
13 actually, before we do that, why don't we take a short
14 break?

15 THE REPORTER: All right.

16 MR. ANDERSON: -- going over an hour.

17 THE REPORTER: All right. We are now going
18 off the record. The time is 2:33 p.m., Central
19 Standard Time.

20 (A recess was taken.)

21 THE REPORTER: We're back on the record. The
22 time is 2:43 p.m., Central Standard Time.

23 Counsel, you may continue.

24 BY MR. ANDERSON:

25 Q. You understand you're still under oath, sir?

1 A. Yes.

2 Q. Paragraph 77 of your report, you start out
3 with the opinion POSITA would be motivated to combine.
4 See that sentence?

5 A. Yes.

6 Q. Why? Why would a POSITA -- why would a POSITA
7 be motivated to combine the teachings in Harder Wolfe
8 and European Pharmacopeia Supplement 4.3?

9 A. Because, as I state here, when POSA combines
10 those three references, it provides a complete
11 disclosure of delivering a Vitamin D supplement like
12 Vigantol oil to an infant. And then I go through
13 each -- each part.

14 Q. Okay. But the delivery of Vitamin D
15 supplement to an infant is, as you say here, quote, By
16 placing one drop on the tip of a spoon to be licked
17 off from the tip of the spoon.

18 A. Right. To provide a surface.

19 Q. Yes. Going to 80 -- Paragraph 81, sir, in the
20 second sentence you say a POSITA would also understand
21 that Vigantol oil was reformulated to replace its
22 Vitamin D2 content with Vitamin D3 well before the
23 publication dates of Harder, paren, published in 2003,
24 close paren, and Wolfe, paren, published in 1970,
25 close paren, comma, therefore a POSITA would

1 understand that both Harder and Wolfe teach Vigantol
2 oil comprised of D3.

3 Do you see that?

4 A. Yes.

5 Q. Can you tell me where in Harder it discloses
6 that Vigantol oil was reformulated to replace its
7 Vitamin D2 content with Vitamin D3 well before the
8 Harder publication date of 2003?

9 A. Well, what I'm -- yeah, so Harder -- okay. So
10 I'm using another reference, this MOM-1014, to show
11 what a person of ordinary skill in the art would have
12 known at the time of Harder and Wolfe, as I talk about
13 in Paragraph 81. And that is a an article by Vieth.

14 And pages 694 to 695 state that basically what
15 a skilled person would have -- would have known. And
16 I think that the reference that MOM-1014 use was like
17 from 1954.

18 Q. Okay. MOM-1014 is not one of the references
19 that you combined -- to that you say -- that you
20 combined together to that says would render claim one
21 and five obviously, correct?

22 A. That's true. I'm using MOM-1014 to show that
23 would've been knowledge that a skilled person would
24 have.

25 Q. Okay. And the same true with regard to Wolfe?

1 A. The same with --

2 Q. Yeah. Where you say that they would know that
3 Vigantol was reformulated to replace its Vitamin D2
4 with Vitamin D3 well before the publication dates of
5 then say Wolfe published in 1970?

6 A. Yes. Because the references -- this article,
7 Mom-1014, page 694 and 95, that cite to reference, and
8 that reference is like from 1954. So -- and I'm using
9 that MOM-1014 again for Harder and Wolfe to show that
10 the Vitamin D and Vigantol was known to be Vitamin D3.

11 Q. Okay. In Paragraph 82, sir, the last sentence
12 on that page you say, quote. Harder further teaches
13 that the delivery should occur by, for example,
14 putting drops of Vigantol oil on the tip of a spoon to
15 be licked off by the baby.

16 Do you see that, sir?

17 A. Yes.

18 Q. That isn't what Harder teaches, is it, sir?

19 A. I mean Harder teaches to put one drop of the
20 Vigantol oil on the tip of the spoon to be looked off
21 by the baby.

22 Q. Yes. But you say putting drops of Vigantol
23 oil on the tip of a spoon.

24 A. Oh, it's just the way I expressed the
25 sentence. It's a single drop.

1 Q. Okay. I mean, Harder is very clear to be
2 very -- that the parent has to be very careful to
3 ensure that there is no more than a single drop.

4 A. That is true.

5 Q. Paragraph 83, sir, in the I guess, second
6 clause in that paragraph, you say, quote, It is my
7 opinion that a POSITA would be motivated to combine
8 Wolfe and Harder to deliver a nutritional and
9 therapeutic amount of Vitamin D in an oil composition
10 to a baby by applying the oil to an object such as the
11 tip of a spoon in a manner that would allow the baby
12 to lick it off, close quote.

13 Do you see that?

14 A. Yes.

15 Q. Okay. First off, what is the manner that you
16 are referring to in that last clause when you say in a
17 manner that would allow the baby to lick it off?

18 A. I just -- I just expressing in a way that the
19 one drop of the Vigantol oil would be placed on the
20 tip of the spoon such that -- this is the way I
21 expressed it -- such that it would allow the baby to
22 lick it off.

23 Q. Okay. How many times -- how many licks does
24 the baby have to make?

25 MS. PATEL: Objection. Scope relevance.

1 THE WITNESS: Yeah. I don't -- I don't know
2 how many licks the baby would have to make. I
3 would -- yeah. I don't know.

4 BY MR. ANDERSON:

5 Q. Where in Wolfe and Harder do they disclose the
6 delivery of a nutritional and therapeutic amount of
7 Vitamin D?

8 A. I mean, in Wolfe it talks about doses of
9 Vitamin D3, like on page 1530. And under Vitamin D3
10 requirement, there's several paragraphs there that
11 talk about a dose. So a POSA as a formulator would
12 see -- see the dose there. And I mean, this is in the
13 context of prophylaxis of Rickets in babies.

14 So that's -- so that's in Wolfe. And in
15 Harder, I mean, a person of ordinary skill in the art
16 as a formulator would understand that the context is
17 prophylaxis of Rickets. And when it's talking about
18 an Option 3, a dose of the Vigantol oil, it's talking
19 about one drop containing 500 international units, and
20 the dose is one drop.

21 Q. Okay. It didn't say anything about how many
22 licks the infant has to take in order to receive a
23 nutritional therapeutic dose?

24 MS. PATEL: Objection. Relevance. Form.
25 Scope.

1 BY MR. ANDERSON:

2 Q. Correct?

3 A. I don't know how many -- how many licks. As I
4 said before, I'd have to ask a clinician --

5 Q. Okay.

6 A. -- about the efficaciousness.

7 Q. Paragraph 87, sir, Page 31, you say starting
8 at the end of the third to last line of the page, you
9 say, quote, That the tip of a spoon is not a natural
10 surface for an infant, close quote.

11 Do you see that?

12 A. Yes.

13 Q. What is your basis for making that statement?

14 A. My basis is, is that a skilled person would
15 recognize that it's a surface, but it's metal. And I
16 call this not a natural -- that's not a natural
17 surface. So then I consider Blass as providing an
18 alternative surface that, you know, in the context of
19 delivering, would be a pacifier.

20 Q. Well, the assertion. I mean, is saying that
21 the tip of a spoon is not a natural surface for an
22 infant, is that within your area of expertise as you
23 described it earlier today?

24 A. Well, I understand as a -- as one who designs
25 formulations and devices to deliver medications, that

1 a metal spoon or plastic spoon, whatever that shape,
2 it is not a natural -- would not be a natural device
3 to deliver it.

4 So, yes, it is in the -- in the skill set of a
5 person of ordinary skill in the art designing a device
6 to deliver the liquid drops.

7 Q. Have you ever designed a device for delivering
8 liquid drops to an infant?

9 MS. PATEL: Objection. Relevance.

10 BY MR. ANDERSON:

11 Q. -- under the age of one in your career?

12 MS. PATEL: Objection. Relevance.

13 THE WITNESS: I have not. Less than one. As
14 I said earlier, I've -- and I have to check. It was a
15 specific antibiotic, not as drops, but...

16 BY MR. ANDERSON:

17 Q. And it was mixed with food I think you said.

18 A. It was designed to be, yes.

19 Q. Harder teaches or references using a spoon,
20 correct?

21 A. Yes.

22 Q. And Wolfe teaches or references using a spoon,
23 correct?

24 A. Yes. In a different context. Wolfe is a
25 different context for the spoon.

1 Q. So there are two references that say use a
2 spoon. And your opinion is that a person of ordinary
3 skill in the art would know that you don't use a
4 spoon; that it's not a natural surface?

5 MS. PATEL: Objection. Form.

6 THE WITNESS: No. All I'm saying here is if
7 I'm just recognizing the fact that a POSA would
8 understand a spoon is not a natural surface; that if
9 they're looking for an alternative, Blass provides
10 that alternative device to use to administer a drop of
11 the -- of the Vitamin D3 liquid.

12 BY MR. ANDERSON:

13 Q. In the sentence that begins on the bottom of
14 31, you say and continues on to the top of 32, you
15 say, quote, Based on Blass, a POSITA would be
16 motivated to use a surface that would more likely
17 trigger the sucking reflex to ensure delivery of the
18 complete dose applied to the surface of a pacifier.

19 Do you see that?

20 A. Yes.

21 Q. Where in Blass is there a disclosure that the
22 sucking reflex would, quote, ensure delivery of the
23 complete dose applied to the surface of a pacifier?

24 A. Well, a POSA reading Blass, I mean, would
25 understand that I think Blass -- Give me one second.

1 So a skilled person looking at Blass on Page 613 would
2 understand that --

3 Q. I'm sorry. Which paragraph are you referring
4 to, sir?

5 A. Sorry. In Blass.

6 Q. Yeah.

7 A. Page 613, left column, Section 2.3, Detailed
8 Procedure, in that first paragraph of that section.
9 Looks like it's the last -- last sentence. And it
10 says that it gives a time that the -- each infant here
11 was allowed to suck on the pacifier for two minutes.
12 So that was a period. So that was that my
13 understanding of Blass that elicited -- that triggered
14 the sucking reflex. So -- that they were -- they were
15 then, you know, measuring when they would prick the
16 heel of the infant.

17 Q. Well, doesn't Blass only disclose that if you
18 have an infant suck on a pacifier that's been dipped
19 in a sucrose solution for two minutes during the
20 treatment period, the infant will then forget about or
21 ignore the pain that it is experiencing?

22 MS. PATEL: Objection. Foundation, form,
23 scope.

24 THE WITNESS: Well, I mean, that may be. I'd
25 have to consult a clinician for -- on that particular

1 part. From a pharmaceutical formulator standpoint, a
2 POSA, I would look -- I mean, this is providing an
3 alternative delivery device for the drop of the
4 Vitamin D3 liquid. And this allows two minutes to be
5 sucked on.

6 So that's how I understood it and applied it
7 to my analysis.

8 BY MR. ANDERSON:

9 Q. Well, but Blass is saying have the kid suck
10 every 30 seconds for two minute -- the two-minute
11 treatment period to, you know, basically distract them
12 from the pain. Isn't that what it's showing, sir?

13 MS. PATEL: Objection. Foundation, scope,
14 relevance.

15 THE WITNESS: Well, I'm looking as a POSA
16 looking for an alternative way to administer a drop to
17 an infant. And I understand in Blass that this is --
18 this is a an alternative way over a spoon that's
19 taught in Harder that licking from the tip of a spoon.
20 This is an alternative surface to use.

21 BY MR. ANDERSON:

22 Q. Okay. But Blass doesn't say anything about
23 whether the infant sucked X milliliters or X amount of
24 the solution off during any of those thirty-second
25 periods, correct?

1 MS. PATEL: Objection. Foundation.

2 MR. ANDERSON: I'm sorry. What was his
3 answer?

4 THE WITNESS: I didn't answer.

5 THE REPORTER: He didn't answer.

6 MR. ANDERSON: Oh, I thought you did.

7 THE WITNESS: I was -- no. I was -- I
8 started, but I realized I was interrupting.

9 BY MR. ANDERSON:

10 Q. Okay. Go ahead.

11 A. Yeah, I don't -- I don't -- I didn't
12 understand them to -- Blass to measure an amount that
13 was delivered. And I'm not relying on Blass for that.
14 I'm just relying on Blass to provide an alternate
15 delivery device as a -- as a pacifier for the Vitamin
16 D3 liquid.

17 Q. Blass does not disclose the administration of
18 Vitamin D3, correct?

19 A. That's correct. It does not.

20 Q. Turning to Paragraph 102, sir.

21 A. Okay.

22 Q. And in there you're talking about a POSITA
23 would understand that Vigantol oil, which contains
24 medium chain triglycerides, also referred to as
25 vegetable oil, would adhere to the surface of an

1 object like a spoon, given its composition.

2 Do you see that?

3 A. Yes.

4 Q. And then your reference point for that is you
5 say MOM-1001. That's the 958 patent, correct?

6 A. Yes.

7 Q. So you are relying on for that point, the
8 disclosure in the 958 patent, and then you also
9 reference MOM-1007 and 4, which is the second
10 translation of Harder, correct?

11 MS. PATEL: Objection. Form.

12 THE WITNESS: I mean, to support my basis
13 there, I'm -- that I'm relying on those two particular
14 cites.

15 BY MR. ANDERSON:

16 Q. Okay. Looking at Paragraph 103, sir, you talk
17 about that Harder teaches directing the drop to the
18 tip of a spoon, after which it is given to the baby to
19 be licked off.

20 Do you see that?

21 A. Yes.

22 Q. And again, I just want to ask again when you
23 refer to tip or when you say that Harder teaches
24 directing the drop to the tip, what are you referring
25 to?

1 A. It's the same answer as earlier.

2 Q. So it's the very end of the spoon?

3 A. Well, I don't know about vary, but I
4 understand the tip of the spoon to be the end; either
5 concave or convex. It's a surface. I think it would
6 be -- the tip would be a location that's going to
7 facilitate administration of the -- of the single drop
8 to an infant.

9 Q. Okay. Does tip equal front in what you've
10 been describing?

11 A. Front?

12 Q. Front, yes. Front of the spoon.

13 A. I'm not sure what the front of the spoon is.

14 Q. Well, I'm asking you well, what -- do you
15 equate tip of a spoon with front of a spoon?

16 MS. PATEL: Objection. Form.

17 THE WITNESS: I'm not -- I don't really
18 under -- I don't know what the front of a spoon is.

19 BY MR. ANDERSON:

20 Q. Okay.

21 A. The tip I -- I understand what tip is. So --
22 and I've said it's either the convex or the concave
23 side towards the end of the spoon. But it's a
24 location towards the tip end opposite the handle
25 that's going to facilitate administration of the

1 single drop for, you know, presentation to the baby
2 and the baby licking off.

3 Q. Okay. You go on in 103 to say that the,
4 quote, the POSITA would understand that a liquid
5 substance that does not adhere to the surface would
6 naturally not remain add quickly on the spool to be
7 licked off, rendering the disposal method of delivery
8 ineffective, close quote.

9 Do you see that?

10 A. Yes.

11 Q. But I believe you have testified that you
12 don't know how many licks are required to get the
13 nutritional therapeutic amount off the spoon, correct?

14 MS. PATEL: Objection. Form.

15 THE WITNESS: Well, but in -- okay. I have
16 testified that, but that's not what this sentence is
17 about.

18 BY MR. ANDERSON:

19 Q. Okay. Well, you say does not -- would
20 naturally not remain adequately on the spoon to be
21 licked off, rendering the disclosed method of delivery
22 ineffective.

23 Do you see that?

24 A. Yes.

25 Q. What would render the disclosed method of

1 delivery ineffective?

2 A. If the liquid drop that's put on the tip of
3 the spoon drips off or rolls down the spoon surface,
4 either complex or concave from the tip end to where
5 it's no longer available when presented to the baby to
6 be licked.

7 Q. Turn to 106, Paragraph 106, sir.

8 A. Okay.

9 Q. In the second sentence you say, quote, It
10 would have been obvious to improve the method of
11 Harder by applying the drop to a pacifier instead of
12 to the tip of the spoon because a POSITA would
13 recognize as a matter of common sense in human
14 experience that the spoon disclosed in Harder is not a
15 natural surface for an infant in contrast with a
16 nipple or nipple like shape and may sometimes inhibit
17 an effective delivery if the infant refuses to suck.

18 Do you see that?

19 A. Yes.

20 Q. Okay. Can you point to -- there's nothing in
21 the prior art that you rely on by references that
22 disclose applying Vitamin D3 to a pacifier, correct?

23 MS. PATEL: Objection. Form.

24 THE WITNESS: That is true. The prior art I
25 rely on, there's not a drop that's applied to a

1 pacifier.

2 BY MR. ANDERSON:

3 Q. You say you referenced a matter of common
4 sense in human experience. Do you see that?

5 A. Yes.

6 Q. What do you mean by common sense in human
7 experience?

8 A. I mean, as a pharmaceutical formulator, it --
9 and we designed formulation and devices to facilitate
10 administration. I mean, it seemed to me, and I think
11 a POSA would understand this, that a pacifier might be
12 more advantageous than a spoon for administration of
13 the single drop of Vitamin D3 in the medium chain
14 triglyceride.

15 Q. How much common sense in human experience is
16 necessary to have this recognition, as you referenced
17 it in Paragraph 106?

18 MS. PATEL: Objection. Foundation, form,
19 scope.

20 THE WITNESS: If you meet the POSA
21 requirements, a POSA would understand this. This is
22 from a perspective of a person of ordinary skill in
23 the art.

24 BY MR. ANDERSON:

25 Q. In your work, sir, what delivery devices have

1 you designed for the administration of a medicant?

2 MS. PATEL: Objection. Relevance.

3 THE WITNESS: So I've designed a -- so it was
4 a straw delivery system that allowed the
5 administration of particulates that contained an
6 active ingredient into -- in that particular case, it
7 could be mixed with like a semisolid food substance or
8 a liquid.

9 I've designed films for application to the
10 buccosal (phonetic), the oral buccosal membrane for
11 either local drug release in the -- with the saliva
12 and/or for release -- or for direct release --
13 transderm -- sorry -- the percutaneous absorption
14 through the through the epithelial membrane.

15 I've designed devices that are applied to the
16 skin that will facilitate transmembrane diffusion from
17 the device into the dermis or even into systemic
18 circulation. I mean, those are a few that come to
19 mind.

20 BY MR. ANDERSON:

21 Q. Okay. With regard to the straw delivery
22 system, did you publish any article describing it?

23 A. No. I was at a company when we did that, and
24 it was proprietary.

25 Q. Did you seek patent protection on that

1 delivery system?

2 A. I think the company did, but I left the
3 company about a year later, and I actually don't know.

4 Q. Okay. Was that a delivery system in
5 conjunction with the product that was being delivered
6 they sought a patent on or don't you know?

7 A. Sorry. Say it again.

8 Q. The straw delivery system, you mentioned that
9 was to deliver a particular composition or thing?

10 A. Yes.

11 Q. Do you know whether the patent application
12 that they filed was for the straw delivery system
13 along with the -- what was being administered?

14 A. I don't really -- I don't remember.

15 Q. Okay. The films for application of a medicant
16 that you described, did you publish a description of
17 those films?

18 A. I think there were publications.

19 Q. Did you seek patent protection?

20 A. I think we did, yes.

21 Q. In the transdermal delivery devices, did you
22 publish descriptions of those delivery devices?

23 MS. PATEL: Objection. Relevance. Scope.

24 THE WITNESS: I believe we did, yes.

25 BY MR. ANDERSON:

1 Q. Did you seek patent protection on those
2 delivery devices?

3 MS. PATEL: Same objections.

4 THE WITNESS: That I -- I don't know.

5 BY MR. ANDERSON:

6 Q. In the last two sentences of paragraph 106,
7 sir, you reference the 958 patent recognizes that,
8 quote, infants often spit out at least some of the
9 liquid, close internal quote, Vitamin D supplement
10 drops.

11 Do you see that?

12 A. Yes.

13 Q. So using that recognition in the 958 patent,
14 you then conclude, quote, a POSITA would be motivated
15 to use a surface such as a pacifier that would more
16 likely trigger the sucking reflex to ensure delivery
17 of the complete dose applied to the surface, close
18 quote.

19 Correct?

20 A. Yes. But I point out that sentence that I
21 quote from in Column 2, I mean, I'm using that.
22 That's background knowledge in the patent. So a POSA
23 would have had knowledge of that.

24 Q. Okay. So you're using the -- it's the
25 disclosure in Column 2 of the patent that then you say

1 would motivate the POSITA to use a surface such as a
2 pacifier that would more likely trigger the sucking
3 reflex to ensure delivery of the complete dose of
4 vitamin surface, correct?

5 MS. PATEL: Objection. Form.

6 THE WITNESS: Well, here I recognize that in
7 the background section of the 958 patent where I cite
8 that a problem with delivering liquids to infants is
9 that they -- they spit out some of these Vitamin D
10 supplement drops. And that is -- that was known to a
11 person of ordinary skill in the art.

12 And then therefore I say because of that, I
13 think a POSA would have been motivated to use a
14 surface, if they could, to deliver a drug solution.

15 BY MR. ANDERSON:

16 Q. None of the five prior art references that you
17 rely on contain that disclosure, correct?

18 MS. PATEL: Objection. Form. Foundation.

19 BY MR. ANDERSON:

20 Q. And just to record, the disclosure that
21 infants often spit out at least some of the liquid
22 Vitamin D supplement drops?

23 MS. PATEL: Same objections.

24 THE WITNESS: Well, none that I recall.

25 MR. ANDERSON: Thank you, Dr. Williams. I

1 appreciate your time. I have no further questions at
2 this time.

3 Your witness, Counsel.

4 EXAMINATION

5 BY MS. PATEL:

6 Q. Okay. Okay. Dr. Williams, can you please
7 turn to Exhibit MOM-1007, the translation from then
8 (indiscernible).

9 A. Okay.

10 Q. Did you review MOM-1007 during the preparation
11 of your declaration?

12 A. I did, yes.

13 Q. Can you please turn to Paragraph 59 in your
14 declaration which is Exhibit MOM-1004.

15 A. I'm sorry. You said 59?

16 Q. Yes.

17 A. Thank you. Okay.

18 Q. Do you recall earlier when opposing counsel
19 asked you about (indiscernible) in 59?

20 A. Yes.

21 Q. Do you see a citation in Paragraph 59 for that
22 quote?

23 A. Yes.

24 Q. What is that citation?

25 A. It's exhibit 20 -- well, no. I'm sorry. It's

1 MOM-1007, which is now Exhibit 20.

2 Q. So that's a reference to MOM-1007 for
3 paragraph 56; correct?

4 A. It is, yes.

5 MR. ANDERSON: Objection. Leading.

6 BY MS. PATEL:

7 Q. If you could turn back to Exhibit MOM-1007.
8 That's the translation (indiscernible)?

9 A. Okay.

10 Q. And in MOM-1004 on page 4 if you look at the
11 top numbers, it says, Use of the oil, single -- one
12 drop of Vigantol oil is given to the baby to be licked
13 off from the tip of a spoon once a day for a breastfed
14 baby, correct?

15 A. Yes.

16 MR. ANDERSON: Objection. Leading.

17 BY MS. PATEL:

18 Q. Is that the disclosure you relied on in your
19 declaration?

20 A. You mean in -- by Paragraph 59?

21 Q. Yes.

22 A. That is it, yes.

23 Q. Is the quotation in Paragraph 59 a clerical
24 error?

25 A. I mean I can --

1 MR. ANDERSON: Object to the form of the
2 question. Leading.

3 MS. PATEL: I'm sorry. I didn't hear an
4 answer.

5 MR. ANDERSON: He didn't answer.

6 THE WITNESS: Yeah, I haven't answered yet.
7 Sorry if I cut off anybody.

8 I could've added the dot, dot, dot. Sorry. I
9 don't remember what that's called at this point, but
10 in order to continue on, I didn't add it there, but I
11 could have. Should have.

12 BY MS. PATEL:

13 Q. Setting aside whether or not there was a
14 revision or clerical error in the quotation, does your
15 declaration accurately cite to the same translation
16 you relied on in forming your opinion?

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

19 THE WITNESS: It does, yes.

20 MS. PATEL: Sorry, Counsel. I only have one
21 copy of this case. This wasn't really expected.

22 MR. ANDERSON: What is it?

23 MS. PATEL: It's the declaration of Dr.
24 Steven Mignones (phonetic) which is MOM-1023.

25 MR. ANDERSON: If you wait a second. I think

1 we have copies. And for the record, it was marked
2 previously.

3 MS. PATEL: Not today.

4 MR. ANDERSON: No. In these -- in the series
5 of depositions. So it's already an exhibit.

6 THE REPORTER: I was just going to ask that.

7 MR. ANDERSON: I guess we don't. So it's
8 Benunez (phonetic)?

9 MS. PATEL: Yes.

10 MR. ANDERSON: So what's the date?

11 MS. PATEL: Would it be helpful if I e-mailed
12 it to you? The date is October 27, 2023.

13 MR. ANDERSON: That's okay. I mean, we marked
14 it during his deposition. That's why I just want to
15 make sure you refer to it and we'll just, you know,
16 say --

17 MS. PATEL: Well, I'll just go ahead and mark
18 it again today --

19 MR. ANDERSON: Yeah. Well --

20 MS. PATEL: -- if that's okay with every.

21 MR. ANDERSON: Otherwise, I can tell you in a
22 second what it was marked previously as --

23 MS. PATEL: Also we'll mark it as
24 plaintiff's --

25 MR. ANDERSON: Okay. That's fine.

1 MS. PATEL: We'll mark Dr. Benunez's
2 declaration as Exhibit 23.

3 (Plaintiff's Exhibit 23 was marked for
4 identification.)

5 BY MS. PATEL:

6 Q. I'm going to hand it to the witness if that's
7 okay.

8 Dr. Williams, did you review Dr. Benunez's
9 translation in preparing for your testimony today?

10 A. I did, yes. Okay.

11 Q. Does Dr. Benunez's translation change your
12 opinions in your declaration?

13 A. No.

14 Q. Okay. Could you please turn to Exhibit MOM
15 1021. That is the declaration of (indiscernible)
16 Tinworth?

17 A. Okay.

18 Q. Exhibit 21 for today. Did you review Ms.
19 Tinworth's translation of to prepare for your
20 testimony today?

21 A. I did, yes.

22 Q. Had you previously reviewed Ms. Tinworth's
23 declaration during preparation of your declaration in
24 this exhibit MOM-1004?

25 A. I did because I think it was -- I did it as

1 part of an exhibit to -- what's the guy's name?
2 Sherman. That I think Sherman had it and Sherman
3 references it here. So I did it as an exhibit because
4 it was an exhibit there, as I recall.

5 Q. Were you aware of Ms. Tinworth's declaration?

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

8 THE WITNESS: Well, I believe that I relied on
9 it or it was a list of materials considered from
10 Exhibit 18, the 2017 declaration. Because in the
11 third one, it's the certified translation of Section
12 15.9 of the Harder book. And I think that was the --
13 what's her name? Tinworth. So a while back I -- I
14 did review it when I prepared that 2017 declaration.
15 BY MS. PATEL:

16 Q. Does Ms. Tinworth's translation change your
17 opinions in your declaration, I believe it was Exhibit
18 17?

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

21 THE WITNESS: Sorry. Say it again, please.

22 BY MS. PATEL:

23 Q. Does Ms. Tinworth's translation change your
24 opinions in your declaration of this Exhibit 17?

25 A. No.

1 Q. Okay. Were you substantively involved in the
2 preparation of your declaration, which is Exhibit
3 MOM-1004?

4 A. Yes.

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

7 THE WITNESS: I'm sorry. Yes, I was involved,
8 substantively involved.

9 BY MS. PATEL:

10 Q. Did anyone at Fish & Richardson just hand you
11 a declaration and demand that you sign it?

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

14 THE WITNESS: No.

15 BY MS. PATEL:

16 Q. Did you review all the materials cited in your
17 declaration during preparation -- the preparation of
18 your declaration?

19 A. Yes, I did.

20 Q. Are the opinions in MOM-1004 your own
21 opinions?

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

24 THE WITNESS: Wait MOM-1004?

25 BY MS. PATEL:

1 Q. That's your declaration, Exhibit 17.

2 A. Oh, okay. That -- yes, my opinions are
3 contained in Exhibit 17.

4 Q. Are these still your opinions sitting here
5 today?

6 A. They -- they are, yes.

7 Q. If we turn to the first page of MOM-1004, it
8 says it's clear that all statements made herein on my
9 own knowledge are true and that false statements made
10 in all in information are believed to be true.

11 Do you see that?

12 A. Yes.

13 Q. Is that your signature on Page 1 of MOM-1004?

14 MR. ANDERSON: Asked and answered.

15 THE WITNESS: And it is.

16 BY MS. PATEL:

17 Q. Do you stand by your declaration?

18 A. I do.

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

21 THE WITNESS: I'm sorry. Yes, I do.

22 BY MS. PATEL:

23 Q. Would you have signed this declaration if it
24 contained opinions that weren't yours?

25 A. I would not have.

1 MS. PATEL: No further questions.

2 MR. ANDERSON: Just a few.

3 FURTHER EXAMINATION

4 BY MR. ANDERSON:

5 Q. Dr. Williams, earlier today, I asked you what
6 documents you reviewed in preparation for your
7 testimony here today. Do you recall that?

8 A. Not word for word, but I do recall you asking
9 something like that.

10 Q. Well, the record will reflect what it
11 reflects. You said that you reviewed your
12 declaration, the 958 patent, the documents you had
13 cited within your declaration, and the prosecution
14 history.

15 Do you recall that?

16 A. Yes.

17 Q. You now just testified that you also reviewed
18 Mr. Benunez's declaration dated October 27, 2023,
19 which counsel has marked as Exhibit 23.

20 Do you recall that testimony a few minutes
21 ago?

22 A. Yes.

23 Q. Did you simply forget that you had reviewed a
24 document that is not referenced or cited in your
25 declaration, Exhibit 17?

1 A. Yes, I forgot. It was provided to me last
2 night. I didn't think about it when you asked the
3 question.

4 Q. Who provided it to you last night?

5 MS. PATEL: Objection. Privileged, and
6 instruct the witness not to answer.

7 BY MR. ANDERSON:

8 Q. Are you going to abide by your counsel's
9 instruction?

10 A. Yes.

11 Q. Did you discuss Exhibit 23 with any counsel
12 from Fish & Richardson?

13 MS. PATEL: Objection. Privileged.

14 Instruct the witness not to answer.

15 BY MR. ANDERSON:

16 Q. Did you discuss with counsel from Fish &
17 Richardson whether Mr. Benunez's translation changed
18 your opinions in any way?

19 MS. PATEL: Objection. Privileged.

20 And instruct the witness not to answer.

21 BY MR. ANDERSON:

22 Q. Going to abide by your instruction?

23 A. Yes.

24 Q. You were referred to Exhibit 21, which is the
25 2017 declaration of Ms. Tinworth; do you recall that?

1 A. Yes.

2 Q. And I believe you testified -- you ended up
3 testifying that you recall reviewing it in connection
4 with your work that resulted in your 2017 declaration,
5 which is Exhibit 18, correct?

6 A. But there I -- it doesn't say it in here, but
7 I'm -- I -- well, on the materials considered, it's a
8 German translation of Harder. And the only other one
9 I'm familiar with is Tinworth. So...

10 Q. Yes. That was in connection with your work
11 for Exhibit 18, your 2017 declaration, though,
12 correct?

13 A. Yes, it was.

14 Q. You did not review the 2017 declaration from
15 Tinworth in connection with your work on your 2023
16 declaration, Exhibit 17, correct?

17 MS. PATEL: Objection. Privileged.

18 Instruct the witness not to answer.

19 BY MR. ANDERSON:

20 Q. Going to abide by your counsel's instruction?

21 A. Yes.

22 Q. If you turn to Exhibit 17, sir, Paragraph 59.

23 A. Okay. I'm there.

24 Q. Okay. You were asked some questions about the
25 source of the quotation there. You see that or do yo

1 remember that?

2 A. Yes.

3 Q. And you said -- I think you agreed that the
4 quotation in Paragraph 59 is not what's exactly in
5 Exhibit 20, Mr. Sherman's revised Tinworth
6 declaration, correct?

7 A. Well, the quotes there. It just -- I stopped
8 the quote early.

9 Q. Well, who in the first instance provided to
10 you the text that's in Paragraph 59? Did that come
11 from one of the drafts provided to you by Fish
12 & Richardson?

13 MS. PATEL: Objection. That is privileged and
14 instruct the witness not to answer.

15 BY MR. ANDERSON:

16 Q. Going to abide by your counsel's instruction?

17 A. Yes.

18 Q. If you turn to Exhibit 18, sir, this is your
19 2017 declaration?

20 A. Okay.

21 Q. If you look at Page 7, Paragraph 24, would you
22 agree that the first sentence of Paragraph 24 in
23 Exhibit 18 is the identical sentence contained --
24 that's the first sentence in Paragraph 59?

25 MS. PATEL: Objection. Relevance.

1 THE WITNESS: It's not the -- it's not the
2 exact sentence in Paragraph 20 --

3 BY MR. ANDERSON:

4 Q. The difference is that in Paragraph 59 it just
5 says Harder, and in Paragraph 24 it says the Harder
6 book?

7 A. That -- that's true.

8 Q. Okay. Otherwise it's identical, correct?

9 MS. PATEL: Objection. Relevance. Form.

10 THE WITNESS: It is.

11 BY MR. ANDERSON:

12 Q. You reviewed Exhibit 17 carefully before you
13 signed it, correct?

14 A. I did, yes.

15 Q. And earlier today when I asked you if you had
16 any corrections or changes to it, you only identified
17 a typo in one paragraph changing the date of 2016 to
18 2006, correct?

19 A. Yes.

20 Q. You never said, oh, I should have inserted an
21 ellipses in Paragraph 59?

22 A. I did not.

23 Q. Did you discuss Paragraph 59 with counsel?

24 A. I did not.

25 MS. PATEL: I've got to make my objections

1 before you --

2 THE WITNESS: Sorry.

3 MS. PATEL: Object to that being privileged.

4 But (indiscernible) to the extent that question yes or
5 no, feel free to do so.

6 MR. ANDERSON: He's already answered.

7 MS. PATEL: I know.

8 BY MR. ANDERSON:

9 Q. And the 2017 translation of Harder by Ms.
10 Tinworth, which she certified as a true, full, and
11 accurate translation, does not contain the words to be
12 licked off, does it?

13 MS. PATEL: Objection. Foundation. Scope.

14 THE WITNESS: Those words are not in the --
15 sorry. Whatever the Tinworth translation is.

16 BY MR. ANDERSON:

17 Q. Exhibit 21?

18 A. Exhibit 21.

19 Q. And yet in your Exhibit 17 report, you
20 repeatedly used the insertion that Mr. Sherman made of
21 to lick off, correct?

22 MS. PATEL: Objection. Form.

23 THE WITNESS: Well, I used it because that's
24 what I was given to base my opinion on to -- from a
25 viewpoint of the person of skill in the art.

1 BY MR. ANDERSON:

2 Q. But you were never told that there's this --
3 well, you didn't recall that you used a different
4 translation in 2017, Tinworth -- or Exhibit 21; is
5 that true?

6 MS. PATEL: Objection. Scope. Relevance.

7 THE WITNESS: Wait. I wasn't --

8 BY MR. ANDERSON:

9 Q. Sir, when you were preparing your -- when you
10 were working on what became Exhibit 17, you didn't
11 recall that back in 2017 you'd relied on a different
12 translation of Harder, did you?

13 MS. PATEL: Objection. Form. Relevance,
14 scope.

15 THE WITNESS: Well, I mean, I -- I knew I had
16 relied on a translation for Harder, because Harder is
17 in German. So when I -- in the -- in my 2017
18 declaration. And that's what was provided to me at
19 that time to consider in my opinions. So I knew that.

20 BY MR. ANDERSON:

21 Q. When you were given the Sherman version,
22 exhibit 20 in connection with exhibit -- the
23 preparation of Exhibit 17, you were not told, Well, by
24 the way, Sherman adds some words that weren't in
25 Tinworth, correct?

1 MS. PATEL: Objection. Privileged.

2 Instruct the witness not to answer that

3 question.

4 BY MR. ANDERSON:

5 Q. Going to abide by your counsel's instruction?

6 A. Yes.

7 Q. With regard to your involvement in the

8 preparation of Exhibit 17, as you sit here today, can

9 you tell me how much of Exhibit 17 in the first

10 instance was the initial draft provided to you by

11 counsel from Fish & Richardson?

12 MS. PATEL: Objection; relevance. Objection;

13 privilege.

14 Instruct the witness not to answer.

15 BY MR. ANDERSON:

16 Q. Going to abide by your counsel's instruction,

17 sir?

18 A. Yes.

19 MR. ANDERSON: All right. I have nothing

20 further. Thank you, sir.

21 THE WITNESS: Yeah, thanks.

22 MR. ANDERSON: We're done.

23 THE REPORTER: All right. Before we go off

24 the record, I am going to take transcript orders.

25 So Counsel Anderson, are you going to be

1 ordering today?

2 MR. ANDERSON: I am.

3 THE REPORTER: And then we're going to be

4 doing expedited 5 days, what we talked about?

5 MR. ANDERSON: Yes, sir.

6 THE REPORTER: All right. Counsel Patel, are

7 you going to be ordering today?

8 MS. PATEL: Yes, please.

9 THE REPORTER: Okay. How would you like that?

10 Electronic?

11 MS. PATEL: Yes, please.

12 MR. ANDERSON: And mine -- yeah.

13 THE REPORTER: Yeah. And then -- sorry. Bad

14 with names.

15 Counsel Reid, are you going to be ordering?

16 MR. ANDERSON: No. He's an expert. He's not

17 counsel.

18 THE REPORTER: Okay.

19 And then Counsel Ungerman?

20 MR UNGERMAN: I'm with him.

21 THE REPORTER: Co-counsel not ordering.

22 MR UNGERMAN: So, no, I'm not ordering. But

23 he'll get a copy when we file it.

24 MS. PATEL: Okay.

25 MR UNGERMAN: If you're ordering anything

1 extra, now the bill has got to go to you.

2 MS. PATEL: Okay. Well, we don't need
3 anything extra.

4 THE REPORTER: All right. That's it.

5 MR. ANDERSON: One other thing.

6 THE REPORTER: On record?

7 MR. ANDERSON: Well, no, it doesn't have to be
8 on the record. This is housekeeping.

9 THE REPORTER: Let's go off the record real
10 quick. We are now off the record. The time is 3:39
11 p.m., Central Standard Time.

12 (The deposition concluded at 3:39 p.m.)

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I, ROBERT O. WILLIAMS, III, have read the foregoing transcript and hereby affix my signature that same is true and correct, except as noted on the previous page.

ROBERT O. WILLIAMS, III

THE STATE OF TEXAS

COUNTY OF _____

Before me, _____, on this day personally appeared ROBERT O. WILLIAMS, III, known to me (or proved to me under oath or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2023.

Notary Public in and for
the State of Texas

CASE IPR 2023-00726

MOM ENTERPRISES, LLC,) IN THE UNITED STATES
) PATENT AND TRADEMARK
Petitioner,) OFFICE
)
vs.)
) BEFORE THE PATENT TRIAL
ELAINE AND REINHOLD W.) AND APPEAL BOARD
VIETH,)
)
Patent Owners.) Patent 9,066,958

REPORTER'S CERTIFICATE

DEPOSITION OF ROBERT O. WILLIAMS, III

DECEMBER 7, 2023

I, Kenswil Paige, Digital Reporter and Notary
Public for the State of Texas, hereby certify to the
following:

That the witness, ROBERT O. WILLIAMS, III, was
duly sworn by me and that the testimony was accurately
captured with annotations by me during the proceeding;

That the transcript was submitted
on _____, 2023, to the witness or to the
attorney for the witness for examination, signature,
and returned to me by _____, 2023;

That the amount of time used by each party at
the proceeding was as follows:

Mr. Anderson, Esq. - 295 minutes
Ms. Patel, Esq. - 11 minutes.

That \$ _____ is the proceeding officer's
charges to Counsel for preparing the original
proceeding transcript and any copies of exhibits;

That pursuant to information given to the
proceeding officer at the time said testimony was
taken, the following includes counsel for all parties
of record:

1 Sarika Patel, Esq., Attorney for Petitioner
2 Alan M. Anderson, Esq., Attorney for Patent Owners
3 mark E. Ungerman, Esq., Attorney for Patent Owners

4 I further certify that I am neither counsel
5 for, related to, nor employed by any of the parties or
6 attorneys in the action in which this proceeding was
7 taken, and further that I am not financially or
8 otherwise interested in the outcome of the action.

9 Further certification requirements pursuant to
10 203 of TRCP will be certified to after they have
11 occurred.

12 Certified to by me this 14th day of December
13 2023.

14 _____
15 Kenswil Paige
16 Notary Commission Texas: 134513132
17 Commission Expires: August 17, 2027
18 Firm Registration No. 3
19
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FURTHER CERTIFICATION UNDER RULE 203 TCRP

The original proceeding was/was not returned
to the proceeding officer on _____.

If returned, the attached Change and Signature
page contains any changes and the reasons therefor.

If returned, the original proceeding
transcript was delivered to Alan M. Anderson, Esq.,
Custodial Attorney.

That \$_____ is the proceeding officer's
charges to the custodial party for preparing the
original proceeding transcript and any copies of
exhibits.

That the deposition was delivered in
accordance with Rule 203.3, and that a copy of this
certificate was served on all parties shown herein on
_____ and files with the Clerk.

Certified to by me this 14th day of December
2023.

Kenswil Paige
Notary Commission Texas: 134513132
Commission Expires: August 17, 2027
Firm Registration No. 3

CERTIFICATE OF TRANSCRIPTIONIST

I, Kalandra Smith, Legal Transcriptionist, do
hereby certify:

That the foregoing is a complete and true
transcription of the original digital audio recording
of the testimony and proceedings captured in the
above-entitled matter. As the transcriptionist, I
have reviewed and transcribed the entirety of the
original digital audio recording of the proceeding to
ensure a verbatim record to the best of my ability.

I further certify that I am neither attorney
for nor a relative or employee of any of the parties
to the action; further, that I am not a relative or
employee of any attorney employed by the parties
hereto, nor financially or otherwise interested in the
outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my
hand this 14th day of December 2023.

Kalandra Smith
Legal Transcriptionist

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:

David B. Conrad
Lance E. Wyatt
Sarika Patel
Casey Kraning
Fish and Richardson P.C.
To: IPR53953-0001IP1@fr.com

/Mark E Ungerman/
Mark E. Ungerman
(Reg. No. 32,070)