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1372 1 UNITED STATES INTERNATIONAL TRADE COMMISSION 2 Washington, D.C. 3 Before the Honorable MaryJoan McNamara 4 Administrative Law Judge 5 -----x 6 In the Matter of Investigation No. 7 8 CERTAIN DERMATOLOGICAL TREATMENT 337-TA-1356 9 DEVICES AND COMPONENTS THEREOF 10 -----x 11 12 International Trade Commission 13 500 E Street, SW 14 Washington, D.C. 15 16 Evidentiary Hearing 17 Tuesday, December 12, 2023 18 Volume VI 19 20 The parties met remotely pursuant to notice of 21 the Administrative Law Judge at 9:14 a.m. Eastern. 22 23 24 Reported by: Linda S. Kinkade RDR CRR RMR RPR CSR 25	1374 1 A P P E A R A N C E S (continued): 2 Counsel for Respondent Cynosure, LLC; Jeisys Medical Inc.: 3 LEYDIG, VOIT & MAYER, LTD. 4 Two Prudential Plaza 5 Chicago, Illinois 60601 6 (312) 616-5600 7 David M. Airan, Esq. 8 James W. Sanner, Esq. 9 Brian Rupp, Esq. 10 Wallace Feng, Esq. 11 Leonard Hua, Esq. 12 Paul Bartkowski, Esq. 13 14 15 Counsel for Respondent EndyMed Medical Inc.; EndyMed Medical 16 Ltd.: 17 PEARL COHEN ZEDEK LATZER BARATZ LLP 18 7 Times Square, 19th Floor 19 New York, New York 10036 20 (646) 878-0800 21 Guy Yonay, Esq. 22 Kyle Auteri, Esq. 23 24 CONTINUED ON FOLLOWING PAGE 25
1373 1 A P P E A R A N C E S: 2 3 [All participants appeared via videoconferencing or 4 telephonically.] 5 6 Counsel for Complainant Serendia, LLC: 7 LATHAM & WATKINS LLP 8 555 11th Street, NW 9 Washington, DC 20004 10 (202) 637-2200 11 Michael A. David, Esq. 12 Cecilia Sanabria, Esq. 13 Kevin C. Wheeler, Esq. 14 Bradley A. Hyde, Esq. 15 Charles Sanders, Esq. 16 Ethan Plail, Esq. 17 Christy McKenna, Esq. 18 19 20 21 CONTINUED ON FOLLOWING PAGE 22 23 24 25	1375 1 A P P E A R A N C E S (continued): 2 Counsel for Respondent Cutera, Inc.; Ilooda Co., Ltd.: 3 COVINGTON & BURLING LLP 4 850 Tenth Street, NW 5 Washington, DC 20001 6 (202) 662-6000 7 W. Kiersten Choi, Ph.D., Esq. 8 Brian Nester, Esq. 9 10 -and- 11 Counsel for Respondent Cutera, Inc.; Ilooda Co., Ltd.: 12 COVINGTON & BURLING LLP 13 3000 El Camino Real 14 Palo Alto, California 94306 15 (650) 632-4700 16 Anupam Sharma, Esq. 17 18 -and- 19 COVINGTON & BURLING LLP 20 415 Mission Street, Suite 5400 21 San Francisco, California 94105 22 (415) 591-6000 23 Dale A. Rice, Esq. 24 Thomas E. Garten, Esq. 25 CONTINUED ON FOLLOWING PAGE

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1376 1 A P P E A R A N C E S (continued): 2 3 Counsel for the Office of Unfair Import Investigations: 4 U.S. International Trade Commission 5 500 E Street, SW 6 Washington, DC 20436 7 (202) 205-2000 8 Aaron D. Rauh, Esq. 9 Investigative Attorney 10 Jeffrey Hsu, Esq. 11 Supervisory Attorney 12 13 14 15 **Index appears at end of transcript** 16 17 18 19 20 21 22 23 24 25	1378 1 left. 2 Those are my comments. And I want to respond 3 very briefly to one thing Mr. Nester said, which is they are 4 only asking for 13 more minutes, and we have three hours 5 today. The three hours is to be viewed in the context of 6 the fact that Respondents have already used two hours and 45 7 minutes more than Serendia. So that three hours is spoken 8 for. Two hours and 45 minutes of that is spoken for by time 9 we just need to catch up. That's number one. 10 Number two, 13 minutes, it doesn't sound like a 11 lot, but it sounds like a lot when Serendia has to pay for 12 it. It doesn't come out of the ether. It comes out of our 13 trial time, which is what we allotted for our rebuttal case, 14 which they have already used. 15 And so according to Order No. 50, if they wanted 16 those 13 minutes, they should have accounted for it by being 17 more efficient with their examination. 18 I'm going to pause there because I know 19 Ms. Kinkade is catching up on the record. 20 JUDGE MCNAMARA: Thank you, Mr. David. 21 Mr. Nester? 22 MR. NESTER: Sure. Just to pick up on the 23 efficiency point. I do submit that the Respondents had been 24 efficient. It's a joint defense group of competitors. We 25 do not agree on all issues and what issues should be
1377 1 P R O C E E D I N G S 2 (In session at 9:14 a.m.) 3 MR. DAVID: Michael David for Serendia. 4 To briefly summarize my earlier comments, the 5 parties to date has used -- Serendia has used 686 minutes, 6 Respondents have used 851 minutes, and Staff has used 212 7 minutes. And because of that and because we know the 8 hearing is scheduled to end at 1:15 today, we know exactly 9 how much time the hearing will need, which means we can 10 calculate exactly how much time the parties remain. 11 And so once you account for Staff's 255 minutes, 12 Order No. 50, which orders that the private parties split 13 the time equally, we know exactly how much time each party 14 has remaining. We know that Respondents, based on that 15 math, have eight and a half minutes remaining. 16 Now Mr. Nester commented, this is before we had 17 created a record, that Respondents actually believed they 18 had 21 minutes or 20 minutes based on estimates that were 19 submitted on December 6 in response to Order No. 50. But 20 those were estimates based on what we estimated the time 21 would be for the hearing. 22 Now we know what the actual time is. So we know 23 the actual time. We know, according to order No. 50, the 24 private parties split the hearing time equally. And if you 25 do that math, Respondents have eight and a half minutes	1379 1 presented. And what I did not hear addressed by Serendia in 2 their comments was the fact that the Staff and Serendia are 3 aligned on the issues and have had, if you look at both 4 their times, they have had more time on the record, the 5 Respondents, on the side of the case that they want. That's 6 a finding of violation. 7 To the specific issue of how much time is 8 allotted, we worked with Complainant on that, agreed to 20 9 minutes. We would have 20 minutes left. And we submit that 10 we should stick with that agreement, or since we are 11 negotiating over what's 11 and a half minutes at this point, 12 we would request that you expand the time to give us that. 13 JUDGE MCNAMARA: Mr. Rauh? 14 MR. RAUH: Aaron Rauh for the Staff, Your Honor. 15 A couple of points. 16 As I mentioned before, it seems like we are now 17 re-arguing the letter briefing that was done at the end of 18 November. I addressed the points that Mr. Nester just made, 19 and he did not submit a letter brief on these points. 20 I take issue with the point that Staff is aligned 21 with Complainant and that time comes out of Complainant's 22 position. The Staff takes a position in every 23 investigation, Your Honor. You know that. Mr. Nester knows 24 that. Mr. David knows that. We all know that. I am not 25 completely aligned with Complainant. I haven't been

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1440 O P E N S E S S I O N JUDGE MCNAMARA: Okay. Thank you. BY MR. SANDERS: Q. Doctor, what was your task for your testimony relating to validity? A. Well, I've indicated my task and conclusions on the -- on slide 2. So if I could have slide 2, I would be able to show you that. Q. Certainly. A. As I'm showing here, my task was to provide an independent opinion on Respondents' contention it is that the asserted claims of the '836 patent are invalid by clear and convincing evidence. Q. And what conclusion did you reach? A. Well, as I'm stating here, I have concluded that the asserted claims of the '836 patent are indeed valid. Q. Let turn to slide 3. Could you please summarize the materials that you considered in reaching your opinion? A. Yes. I've listed several of the materials that I considered, including the '836 patent and its file history. I reviewed deposition testimony as well as Dr. Goldberg's opinions and the opening expert report of Dr. Woloszko. I reviewed Your Honor's Claim Construction Order and the Markman briefings. I've reviewed discovery responses and document productions, references that Respondents	1442 the art fails to render obvious in claim 1 of the '836 patent? A. Well, there are a few claim limitations in claim 1 that in my opinion the Ganz reference doesn't disclose. The first one that I've highlighted is the electrodes being bipolar limitation. And then, further, configured to provide an alternating current (AC) RF signal to the plurality of electrodes configured to cause coagulation around each electrode rather than coagulating between the electrodes. Q. Let's take each of those one by one. Turning to slide 7, what aspect are we going to focus on first? A. I have three points that I'd like to make, and the first one is that, in my opinion, the Ganz reference does not disclose results using bipolar electrodes. Q. Turning now to slide 8, why have you included Dr. Woloszko's slide, RDX-10 at 18, on your slide 8? A. This is Dr. Woloszko's summary slide in which he juxtaposes the language from the '836 patent claim 1, the electrodes being bipolar, with a couple of selective quotations from paragraphs 55 and 56 of the Ganz patent application, and I don't think that's a complete juxtaposition. Q. Let's turn now to slide 9. Why did you underline monopolar in paragraph 55 of Ganz and insert the question
1441 identified, and I was here for Dr. Woloszko's direct testimony and his slides or I reviewed his testimony. Q. Is CX-3041 identified at the bottom of this slide the materials that you considered? A. Yes. Q. I'd like to first focus on the issue of non-obviousness. Turning to slide 5, can you briefly summarize Dr. Woloszko's obviousness opinions for the '836 patent? A. Yes. Dr. Woloszko asserts the grounds of the Ganz reference plus the knowledge of a POSITA against claim 1, and against claim 9 he asserts Ganz plus the knowledge of a POSITA plus Manstein, and against claim 22, he asserts Ganz plus the knowledge of a POSITA plus the Hantash '718 reference. Q. Do you agree with Dr. Woloszko's obviousness opinions? A. I do not, and I'll supply my reasons momentarily. Q. Just to be clear, in your opinion, do the grounds that Dr. Woloszko identified render claims 1, 9, and 22 of the '836 patent obvious? A. No. Q. Now let's discuss your reasons. Moving on to slide 6, what claim limitations are you opining that Ganz combine with the knowledge of a person of ordinary skill in	1443 monopolar or bipolar above the passages, paragraphs 55 and 56? A. Well, it's important to one of skill that Ganz is disclosing either monopolar or bipolar. It is not specific about that. And, in fact, as I'll show momentarily, no one can identify how Ganz got the results that it produces. So those -- the citation that Dr. Woloszko has made to bipolar electrodes is not only uncertain, but, moreover, it doesn't take into account the claim construction of bipolar electrodes in this matter. Q. Now can you explain why you added underlining in claim 1 of the '836 patent on the left in underlining the phrase configured to cause coagulation around each electrode rather than coagulating between the electrodes? A. Well, again, that is related to my earlier opinion that the -- Your Honor's claim construction was a plurality of electrodes, the electrodes being bipolar, and that's a configuration that is specific to the '836 patent claim 1, but it is not at all disclosed by the Ganz reference. Q. Does Ganz disclose causing the claimed coagulation with bipolar electrodes? A. It does not. Q. Let's move to slide 10. Why did you include monopolar or bipolar as a question above Figs. 9 and 10 of

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1444 1 Ganz here? 2 A. Well, Figs. 9 and 10 of Ganz have already been 3 addressed yesterday by Dr. Goldberg, but these are 4 histology. The cross-section in Fig. 9 shows the 5 perforations in skin, and there's a plan view in Fig. 10, 6 but none of these are labeled or otherwise described as 7 being achieved by a particular electrode activation such as 8 monopolar or bipolar. 9 Q. Is there any information in Ganz to tell a person 10 of ordinary skill in the art whether Figs. 9 and 10 were 11 generated using monopolar or bipolar electrodes? 12 A. No, neither I nor Dr. Woloszko for that matter 13 could identify such information. 14 Q. Let's turn to slide 11. And just to be clear, 15 was Dr. Woloszko able to identify any results in Ganz 16 obtained using bipolar electrodes? 17 A. No. As I'm highlighting from some of his hearing 18 transcript language, ultimately he concludes in a question, 19 so you don't know whether Ganz shows any outcome or results 20 using bipolar electrodes, right? Answer. That's correct. 21 Q. Let's move to slide 12. What is the additional 22 issue you've noted here? 23 A. Well, that, moreover, Dr. Woloszko did not 24 explain how Ganz would have rendered obvious, quote, the 25 plurality of electrodes, the electrodes being bipolar,	1446 1 Q. Let take a look at the disclosure that 2 Dr. Woloszko pointed to. Now on slide 15. Why have you 3 included Dr. Woloszko's slide RDX-10 at 23 here? 4 A. Again, I'm showing how Dr. Woloszko has 5 juxtaposed certain highlighted language of '836 patent claim 6 1 with disclosure in Ganz. 7 But the disclosure in Ganz about the 8 radiofrequency energy is very again. It just says an energy 9 source coupled to the plurality of electrodes. It does say 10 in preferred cases the electrodes are RF electrodes and 11 configured for receiving RF energy, but that's as specific 12 as it gets. 13 Q. Turning to slide 16, why did you add the 14 question, voltage pulses or alternating current RF above 15 paragraph 11 that Dr. Woloszko had cited? 16 A. Well, because those are at least two of the 17 categories of radiofrequency energy that can be supplied to 18 electrodes, either monopolar or bipolar, and one of skill 19 understands that there are distinctions in that type of 20 radiofrequency energy in this application, as Dr. Woloszko 21 himself admits. 22 Q. Let's move on to slide 17. What are you showing 23 here with excerpts from Dr. Woloszko's '202 patent, which is 24 RX-303? 25 A. Again, these are highlighted portions from
1445 1 which, as I've mentioned previously, already excludes 2 certain bipolar configurations that have commonly polarized 3 electrodes like the INTRAcel configuration, which was 4 excluded under the adopted claim construction. 5 Q. Turning to slide 13, focusing now on the (AC) RF 6 limitation of claim 1, in your opinion, does Ganz render 7 obvious the claimed (AC) RF? 8 A. No, it does not. 9 Q. Now on slide 14, can you explain in more detail 10 why you disagree with Dr. Woloszko's view that Ganz renders 11 the (AC) RF limitation obvious. 12 A. Well, here in slide 14 I've juxtaposed the claim 13 construction, which is plain and ordinary meaning, an 14 electrical signal with oscillating current (current 15 alternating polarities) and having a radiofrequency measured 16 in MHz. 17 And on the right-hand side I'm pointing out that 18 there is no dispute that Ganz doesn't measure or mention 19 whether RF uses oscillating current, and my point here is 20 that Dr. Woloszko merely contends that Ganz must have used 21 (AC) RF, but there's no information there. 22 Q. In your view would a person of ordinary skill in 23 the art conclude that Ganz must have used (AC) RF? 24 A. No. Ganz is very general about the RF energy 25 that it applies, and there's no distinctions.	1447 1 Dr. Velasco's own '202 patent, which in the upper excerpt 2 state the present invention applies high frequency RF 3 electrical energy, and I've highlighted in the lower excerpt 4 that the voltage is usually delivered in a series of voltage 5 pulses or alternating current. 6 So Dr. Woloszko already recognizes the 7 distinction here, and I'm further supporting that with 8 another citation down in the lower left to CX-3024, which is 9 the Woloszko '358 patent. 10 Q. And how does this slide relate to your opinion 11 that Ganz does not render use of (AC) RF obvious? 12 A. Well, as I made the point earlier, Ganz is 13 extremely general and nonspecific about the type of 14 radiofrequency energy delivered to its electrodes, and here 15 I'm pointing out that Dr. Woloszko as at least one of 16 ordinary skill in the art already understands the 17 distinction among different types of radiofrequency energy. 18 Q. Let's move on to slide 18. What is the 19 significance of claim 37 of Dr. Woloszko's '153 patent, 20 CX-1092, that you've included at the top of the slide? 21 A. Well, here I'm highlighting from Dr. Woloszko's 22 '153 patent the phrase radiofrequency alternating current, 23 and I'm juxtaposing that in the lower part of slide 18 with 24 Dr. Na's own testimony, and he admits in response to a 25 question, what is the difference between (AC) RF and just

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1448 1 RF, and his answer is, well, for RF there are DC RF and also 2 (AC) RF method as well, and I'm further citing to CX-2653, 3 the Cheng '543 patent for additional support for that. 4 Q. Doctor, in this field does a generic reference to 5 RF mean that (AC) RF must have been used? 6 A. No. One of skill would not be informed about the 7 particular type of RF that's used. 8 Q. Move on to slide 19. 9 What are the additional issues you've noted here? 10 A. Well, the additional issues, as I'm showing on 11 slide 19, are that Dr. Woloszko doesn't further explain why 12 one of skill would have been motivated to use (AC) RF, in 13 particular, in the context of Ganz, which is, as we heard 14 from Dr. Goldberg yesterday, designed for perforation of 15 skin and cut and cautery. Dr. Woloszko further doesn't 16 consider the advantages and disadvantages of using (AC) RF 17 in that context. And so there's no motivation to combine in 18 my view. 19 Q. Moving on to slide 20, what is your opinion about 20 whether Ganz teaches or renders obvious the claimed 21 coagulation? 22 A. Ganz does not. 23 Q. Let's turn to slide 21. Can you explain the 24 basis for your opinion that Ganz does not render obvious the 25 limitation configured to cause coagulation around each	1450 1 area, 4, that I'm highlighting in paragraph 28, is clearly a 2 perforation, that's why I'm underlining that in red, which 3 extends vertically into the skin. 4 Q. Just to be clear, does Ganz cause coagulation 5 around the electrodes? 6 A. Ganz teaches that the laser causes coagulation, 7 and so that's -- that's how Ganz is distinguishing itself. 8 There is a small amount, as I heard from Dr. Goldberg, a 9 small amount of coagulation to stop the bleeding when Ganz 10 does this, but that's not the purpose of its invention. 11 Q. Using Ganz's approach, is coagulation achieved 12 around the electrodes and not between them? 13 A. No. 14 Q. Let's turn to slide 23. With reference to column 15 4, lines 4 through 19 of the '836 patent, can you explain 16 what the '836 patent says about systems that overheat or 17 burn tissue? 18 A. Well, in its background from the specification, 19 the '836 patent, that I'm quoting here from column 4, lines 20 4 through 19, I've highlighted a column of points that the 21 specification makes about the serious side effects of 22 existing technologies, and Dr. Goldberg also commented on 23 these yesterday that certain treatments can cause 24 overheating or burning, which can cause permanent skin 25 damage.
1449 1 electrode rather than coagulating between the electrodes? 2 A. Yes. On the left-hand side I'm just reproducing 3 the agreed construction of this plain and ordinary meaning, 4 two or more electrodes adapted to cause coagulation around 5 each electrode without such coagulation fully extending from 6 one electrode to another electrode, and on the right-hand 7 side I'm pointing out that, by contrast, Ganz actually 8 removes tissue around each electrode to create holes or 9 perforations, as we heard from Dr. Goldberg yesterday, 10 rather than to cause the coagulation around each electrode, 11 as the construction is agreed on. 12 Moreover, Ganz distinguishes approaches that 13 merely cause coagulation, like the '836 patent, and for its 14 part, in the third bullet, the '836 patent distinguishes 15 systems that overheat and burn tissue like Ganz, so they are 16 really distinct. 17 Q. Moving to slide 22, which we saw with 18 Dr. Goldberg, can you please briefly explain how Ganz's 19 approach compares to approaches that just cause coagulation? 20 A. Yes. I heard Dr. Goldberg testify yesterday that 21 the Fraxel laser created, I think, in his words beautiful 22 zones of coagulation, and those are indicated in the Ganz 23 Fig. 8 in green ovals, and, by contrast, in Ganz Fig. 9 and 24 circled in red ovals are the perforations that the Ganz 25 reference teaches in its paragraph 28. So that treated	1451 1 And, further, at the bottom I've highlighted that 2 the '836 patent teaches that existing technology may create 3 scars, created overheated or burned epidermis. 4 Q. How does this passage of the '836 patent at 5 column 4, lines 4-19, relate to Ganz? 6 A. Well, Ganz is actually overheating and burning 7 epidermis in order to create its perforation. So these are 8 completely distinct teachings. 9 Q. Moving to slide 24, in sum, what is your opinion 10 regarding whether Ganz plus knowledge of a person of 11 ordinary skill in the art discloses or renders obvious claim 12 1 of the '836 patent? 13 A. In my opinion, the asserted grounds of Ganz plus 14 the knowledge of one of ordinary skill in the art does not 15 render obvious the claim 1 of the '836 patent. 16 Q. Let's move on to claim 9. Now on slide 25. How 17 do the requirements of claim 9 compare to what Ganz teaches? 18 A. Well, as I'm showing, the language of claim 9 19 limits the electrode -- electrodes to be needles and have a 20 diameter from .25 millimeters to .3 millimeters, and Ganz is 21 silent about needle diameter but does disclose perforations 22 that are, quote, widest at the top 50 to 100 microns, which 23 is .05 millimeter to .1 millimeter in diameter. 24 Q. Moving to slide 26, what does Ganz say about the 25 relationship between the width of the perforation and the

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1452 1 width of the needle? 2 A. Well, Ganz teaches one of skill that the width of 3 the perforation created will be at least the width of the 4 electrode, in many cases larger. So, in my opinion, that's 5 why Ganz's teaching using very thin needles, which are only 6 up to .1 millimeter or 100 microns, to keep the holes as 7 small as possible. So going to a larger needle would only 8 make the perforations larger. 9 Q. Moving now to slide 27, would a person of 10 ordinary skill in the art have been motivated to use larger 11 needles such as the claimed 250 to 300 micron needles in the 12 Ganz system? 13 A. Well, no. As I previously mentioned, that would 14 only make the perforations larger and cause more skin 15 damage. So my point here is that Dr. Woloszko tries to fill 16 this gap with the Manstein disclosure. 17 Q. Moving to slide 28, would it have been obvious to 18 combine Ganz with Manstein to achieve claim 9? 19 A. No, not in my opinion, because, as I'm pointing 20 out, Ganz is directed to ablation and removal of tissue, and 21 Manstein expressly warns against that kind of thing. It 22 says, quote, unwanted temperature profiles within the skin 23 leading to either no therapeutic effect or scar formation 24 due to the overheating would be what it's warning against. 25 So Manstein's needle diameters, quote, have a	1454 1 Q. Moving to slide 31. What are you showing on this 2 slide about Hantash '718? 3 A. Yes, I've shown a number of figures from Hantash 4 '718 here, because what is consistent among all of them is 5 that it discloses treatment zones between electrodes not 6 around each electrode and not between the electrodes. So 7 it's really the inverse of what is being taught by the '836 8 patent. 9 Q. And just for clarity, what are those shaded gray 10 areas that we're seeing here in Hantash '718's figures? 11 A. I've illustrated that or labeled those on the 12 left-hand side of slide 31 as treatment zones. 13 Q. Are those between the needles? 14 A. They are between the needles. 15 Q. Let's move to slide 32. Now focusing on 16 dependent claim 22, why do you believe that Ganz does not 17 render claim 22 obvious? 18 A. Well, Ganz in claim 22, which depends from claim 19 14, further limits the RF frequency from .5 to 10 MHz, and 20 the predetermined time interval from .05 to .8 seconds. And 21 in my opinion Ganz does not render claim 14 obvious for the 22 same reasons as claim 1, as I previously stated, and, 23 moreover, Ganz is silent on any treatment time as well as on 24 RF frequency. 25 Q. Moving to slide 33, would a person of ordinary
1453 1 width of about 500 to 1000 microns or preferably 700 to 800 2 microns. And it does allow that needles of less than 500 3 microns in diameter may be used in they are mechanically 4 strong enough, but it certainly doesn't suggest using 5 needles half that diameter which is what the limitations in 6 claim 9 are. 7 Q. Moving to slide 29, in sum, what is your opinion 8 regarding whether Ganz plus knowledge of a person of 9 ordinary skill in the art discloses or renders claim 9 of 10 the '836 patent obvious? Let me rephrase the question 11 because I forgot Manstein. 12 In sum, what is your opinion regarding whether 13 Ganz plus the knowledge of a person of ordinary skill plus 14 Manstein renders obvious claim 9 of the '836 patent? 15 A. Well, as I've explained, in my opinion Ganz plus 16 the knowledge of one of skill in view of Manstein does not 17 render obvious asserted claim 9 of the '836 patent. 18 Q. Let's move to claim 22, on slide 30. Before we 19 get to dependent claim 22, let's first focus on independent 20 claim 14, from which it depends. How does your opinion for 21 claim 14 compare to your opinion for claim 1? 22 A. Well, in summary, they are the same, claim 1 is 23 an apparatus claim, claim 14 is a method claim, but they 24 both contain very similar language, and so my opinions apply 25 equally.	1455 1 skill in the art have been motivated to combine Ganz with 2 Hantash '718 to achieve claim 22? 3 A. No. As I said previously, the Ganz reference is 4 directed to removal of tissue around electrodes, whereas, as 5 we saw just momentarily, with all the figures from Hantash 6 '718, that's directed to treating tissue between electrodes. 7 And so, in my opinion, one of skill wouldn't be motivated to 8 combine Hantash '718 with Ganz to achieve -- to render 9 obvious 22. 10 Q. Moving to slide 34, in sum, what is your opinion 11 regarding whether Ganz plus the knowledge of a person of 12 ordinary skill plus Hantash '718 renders claim 22 of the 13 '836 patent obvious? 14 A. Well, in my opinion, that combination does not 15 render obvious claim 22. 16 Q. Let's change topics now and talk about 17 enablement. Moving to slide 36. What was your conclusion 18 as to whether the '836 patent claims are enabled? 19 A. Well, in my opinion one of skill is able to 20 practice the full scope of the claimed inventions without 21 undue experimentation, as of the filing date of the '836 22 patent. In other words, the asserted claims are enabled. 23 Q. Let's move to slide 37. Why did you include 24 Dr. Woloszko's slide RDX-10 at 46 here? 25 A. Dr. Woloszko has enumerated the Wands factors

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1472 1 A. Well, I've highlighted the elements that I 2 previously highlighted a few slides ago about the limiting 3 preamble of skin treatment apparatus, the electrodes being 4 bipolar, those are specific, the specific delivery of 5 (AC) RF, and those are all, as I highlighted in the bottom 6 of the claim, configured to cause coagulation around each 7 electrode rather than coagulating between the electrodes. 8 And in my opinion, as I show on the right-hand side of slide 9 63, that's a configuration that causes a specific effect, 10 coagulation around the electrodes, not between them. 11 Q. For clarity, are the '836 patent claims directed 12 to, as Dr. Woloszko contends, the effect of RF current 13 flowing through tissue? 14 A. No. And, in fact, one of skill would expect 15 under those conditions to have coagulation, for example, 16 between electrodes, as I've seen in many prior art 17 disclosures. 18 Q. Moving now to slide 64, can you summarize your 19 response to Dr. Woloszko's abstract idea, a natural 20 phenomenon opinions? 21 A. Yes. I disagree with Dr. Woloszko's opinions, as 22 I'm showing on slide 64, and, indeed, it's my opinion that 23 the '836 patent is, indeed being directed to patent eligible 24 categories. 25 Q. Turning to slide 65, on this slide what if any	1474 1 coagulation around each electrode rather than coagulating 2 between the electrodes. 3 Q. Finally, in summary, what is your conclusion 4 about the validity of the asserted '836 patent claims? 5 A. Well, for all the reasons I've just discussed in 6 my opinion, the asserted claims of the '836 patent are 7 valid. 8 MR. SANDERS: Thank you. Pass the witness. 9 JUDGE MCNAMARA: Thank you, Mr. Sanders. 10 Mr. Airan, it looks like you are moving into the 11 screen, so I'm assuming that means you're up. You're muted. 12 MR. AIRAN: Could we take a quick break here? 13 JUDGE MCNAMARA: Yes. It's 11:28. I'll see you 14 back here in 15 minutes. Thank you. 15 (Whereupon, the proceedings recessed at 11:28 16 a.m.) 17 (In session at 11:45 a.m.) 18 JUDGE MCNAMARA: Mr. Airan, are you ready? 19 MR. AIRAN: I'm ready Your Honor. Very good. 20 Then we can start. 21 CROSS-EXAMINATION 22 BY MR. AIRAN: 23 Q. Is the witness ready? 24 JUDGE MCNAMARA: Dr. van der Weide, are you 25 ready?
1473 1 distinction are you drawing between claim 1 of the '836 2 patent and observation of the Na Effect? 3 A. Well, as I've highlighted in the language of 4 claim 1 on the left, this is a very specific apparatus, and 5 it's -- the claim is configured. It's a configuration to 6 cause coagulation around each electrode rather than 7 coagulating between the electrodes. 8 And on the right-hand side, again, from Dr. Na's 9 Nature article, I'm showing that Dr. Na applied this 10 configuration and observed in histology the results, which 11 he called the Na Effect. But the claim-specific apparatus 12 is not the observation. 13 Q. Moving to slide 63, can you explain how the 14 '836 -- 15 JUDGE MCNAMARA: Pardon me. I think you meant 16 slide 66. 17 MR. SANDERS: Thank you, Your Honor. I misspoke. 18 66. 19 Q. Focusing on slide 66, can you explain how the 20 '836 patent compares to prior art approaches such as the 21 references that you've discussed earlier in your testimony? 22 A. Yes, the '836 patent claims claim a distinct 23 configuration that is distinct over the prior art, as I 24 showed, for example, distinct over the Manstein reference or 25 the Hantash '718 reference, because it's configured to cause	1475 1 THE WITNESS: I am. 2 Q. Welcome back, doctor. 3 Can I have up on the screen CX-1089, please, the 4 first page? 5 Dr. van der Weide, you're familiar with the 6 Hantash '718 application or reference; is that correct? 7 A. Yes. 8 Q. And you offered several opinions in response to 9 your counsel's questions on direct examination, is that 10 fair? 11 A. Yes. 12 Q. All right. And if we can look at the first page, 13 that reference is directed to an RF microneedling device; is 14 that correct? 15 A. That's what it says. 16 Q. And you know that from your review and analysis 17 of that document, correct? 18 A. Well, I know that from the title. 19 Q. And also from your review of the document. You 20 offered several opinions on that, so you know what that's 21 directed to, correct? 22 A. Yes. 23 Q. Would you agree that the Hantash '718 patent 24 describes electrodes that penetrate into the dermis? 25 A. I haven't -- I don't recall that specific

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1476 1 language, perhaps you could direct me to the -- 2 Q. Sure. Let's take a look at Fig. 1 of the patent. 3 Do you see that there's needles 115 are penetrating into the 4 dermis? 5 A. I see what appears to be a boundary between two 6 layers in what appears to be tissue. Does it call out the 7 tissue as the dermis? 8 Q. Well, let me -- 9 A. I don't recall. 10 Q. Let me ask you the question. You testified about 11 the treatment zones of Hantash. Do you recall that? 12 A. Yes. 13 Q. All right. If we could take a look at paragraph 14 43 of Hantash, please. Do you see that the treatment zones 15 160 are shown in Fig. 1 to be located within the dermis 153? 16 Do you see that? 17 A. I see that. I see additional language that says 18 but these treatment zones may also be located within the 19 epidermis, at the epidermal junction or treatment zones may 20 include regions in both the epidermis and dermis. 21 Q. Correct. As shown in Fig. 1, the treatment zones 22 160 are in the dermis, right? 23 A. If -- if that is labeled 153, I don't recall. 24 Q. Let's go back to Fig. 1, if we can have that, 25 please.	1478 1 Q. And 300 microns is the same as 0.3 millimeters? 2 A. Yes. 3 Q. So as of the June 7th, 2007 publication date of 4 happen target bitrate 718, a POSA then would know that 5 needles greater than 50 microns but less than 0.3 millimeter 6 would be suitable for use in an RF microneedling device; is 7 that fair? 8 A. That's what Hantash teaches. 9 Q. Okay. If we could have up, please, CDX-46C.41. 10 This was a slide that you presented on direct. 11 Do you recall that? 12 A. Yes. 13 Q. And in your testimony you referred to the 14 specification describing use of an AC signal having a 15 frequency below 0.5 MHz causing scarring; is that correct? 16 A. Well, it's directed more to just the breadth of 17 the energy field and one possibility as it states, because 18 of that, could be scarring in adjacent epidermis. 19 Q. So that sets a limit of 0.5 MHz; is that correct? 20 A. It's just teaching that that's what can happen at 21 a frequency below that point. 22 Q. Is it possible to infringe, say, claim 1 of the 23 '836 patent using an AC frequency that's less than 0.5 MHz? 24 MR. SANDERS: Objection, Your Honor. 25 JUDGE MCNAMARA: Why? Who is speaking, please?
1477 1 Do you see that now, the treatment zones? 2 A. I see that. 3 Q. Okay. So you would agree that the needles 115 4 are inserted into the dermis in Hantash, that's where the 5 treatment zones are, current? 6 A. I would agree. 7 Q. Okay. And would you also agree that Hantash 8 teaches that the needles must be at least 50 microns in 9 diameter to avoid breakage? 10 A. Again, I don't have specific recollection of the 11 50 microns, but I'd be happy to testify to its disclosure. 12 Q. Okay. Let's take a look at that. If we could 13 have up paragraph 39, please, of Hantash. 14 We've highlighted it on the screen there. This 15 is paragraph 39 now of CX-1089. And it states that the 16 diameter of the needles 115 is preferably at least 50 17 microns to reduce breakage of the needles. Do you see that? 18 A. I do. 19 Q. Okay. So a POSITA would know that needles of 20 greater than 50 microns would be strong enough to be 21 penetrating into the dermis, correct? 22 A. Well, it teaches a range of 50 to 300. 23 Q. And those needles would be suitable for use in an 24 RF microneedling device, is that fair? 25 A. Evidently in Hantash's teaching.	1479 1 MR. SANDERS: Your Honor, this is Charles Sanders 2 on behalf of Complainant Serendia. 3 JUDGE MCNAMARA: What's your objection? 4 MR. SANDERS: The objection is twofold. One, 5 beyond the scope of direct, and the second part of the 6 objection is the reason it's beyond the scope of the direct 7 is there was a device in this case that was an infringing 8 device, and that Respondent has settled, the Genius device, 9 that did use a frequency below .45 MHz. So this is getting 10 back into infringement by devices that are now out of the 11 case. 12 JUDGE MCNAMARA: Go ahead. How would you respond 13 to that, Mr. Airan? 14 MR. AIRAN: I'm not asking about another device. 15 I'm asking about his 112 testimony, which he gave earlier 16 today, which was the specification teaches that you should 17 not go below 0.5 MHz or else you'll get scarring. 18 I'm asking if it's possible to infringe that 19 claim if you go less than 0.5 MHz. 20 JUDGE MCNAMARA: I think that's actually a fair 21 question. 22 MR. SANDERS: Thank you, Your Honor. 23 THE WITNESS: Can I have the question again, 24 please? 25 Q. Sure. Is it possible to infringe claim 1 of the

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1480 1 '836 patent using an AC frequency of less than 0.5 MHz? 2 A. Well, the claim 1 doesn't state a frequency 3 range, and the specification says the permissive may, it 4 doesn't say will. So, yes. 5 Q. Okay. So in your view the 0.5 MHz is not a 6 critical endpoint of a range. 7 A. Well, the patent, as I previously testified, says 8 that the broad energy field may cause scarring in adjacent 9 epidermis, it doesn't say will, so it's providing guidance 10 but not a hard limit. 11 Q. Okay. 12 MR. AIRAN: I'll pass the witness, Your Honor. 13 JUDGE MCNAMARA: All right. Thank you. 14 Mr. Rauh? 15 MR. RAUH: Aaron Rauh for the Staff, Your Honor. 16 No questions. 17 JUDGE MCNAMARA: All right. Thank you. Let me 18 see. 19 Any redirect? 20 MR. SANDERS: Just running up to the mic, 21 Your Honor. No redirect. Thank you. 22 JUDGE MCNAMARA: All right. Then, 23 Dr. van der Weide, you may step down. Thank you very much 24 for your testimony and your time. 25 THE WITNESS: Thank you, Your Honor.	1482 1 right. Go ahead, Ms. Sanabria. 2 MS. SANABRIA: Judge McNamara, yes, that's 3 correct, there was no objection. 4 DIRECT EXAMINATION 5 BY MS. SANABRIA: 6 Q. Welcome back, Mr. Crosby. 7 A. Thank you. 8 Q. You previously provided opinions on infringement 9 and domestic industry, correct? 10 A. Yes. 11 Q. Have those opinions changed since you provided 12 that testimony at the beginning of the hearing? 13 A. No. 14 Q. Were you here when the Respondents' experts 15 provided their rebuttal testimony on validity and 16 infringement? 17 A. Yes. 18 Q. Do you agree with their opinions? 19 A. No, I do not. 20 Q. And are you addressing those opinions here today? 21 A. Yes. 22 Q. Did you prepare any slides to assist you with 23 your testimony? 24 A. Yes. 25 Q. If we can put up CDX-0043C.
1481 1 MS. SANABRIA: Good morning, Your Honor. This is 2 Cecilia Sanabria for Complainants. We're just getting set 3 up here, but we will be ready to call our next witness in 4 just a few seconds. 5 JUDGE MCNAMARA: Very good. Thank you, 6 Ms. Sanabria. 7 MS. SANABRIA: Judge McNamara, I think we're 8 ready, if you're ready. 9 JUDGE MCNAMARA: I am. Is your witness ready? 10 MS. SANABRIA: Your Honor, at this time we would 11 like to call Mr. Crosby to the stand. 12 PETER CROSBY, 13 having been previously duly sworn or affirmed 14 on his oath, was thereafter examined and testified further 15 as follows: 16 JUDGE MCNAMARA: Please state your full name. 17 THE WITNESS: Peter Andrew Crosby. 18 JUDGE MCNAMARA: Thank you very much. 19 Ms. Sanabria, he is your witness. 20 MS. SANABRIA: For the record, Mr. Crosby was 21 previously tendered and admitted as an expert on the 22 delivery of electromagnetic radiation and energy and 23 radiofrequency in medical devices. 24 JUDGE MCNAMARA: And there is no objection? I'm 25 sorry. He was still under oath. Never mind. That's all	1483 1 Is this the first slide in the deck that you 2 prepared? 3 A. Yes. 4 Q. Moving to slide 2, what opinions have you reached 5 in response to the Respondents' experts? 6 A. There are five opinions here. 7 The first is that the accused and domestic 8 industry products practice the asserted claims. 9 The second is the Family Two patents are pre-AIA, 10 and I understand there is no dispute about that. 11 Third, none of the asserted claims are invalid 12 under 102 or 103. 13 Fourth, Mr. Kim did not significantly contribute 14 to any claim of the Family Two patents. 15 And, five, the Family Two patents and the Korean 16 patent '581 do not use the same principles as required by 17 the Jeisys-Na agreement. 18 Q. I'd like to begin with your rebuttal testimony 19 regarding infringement and the technical prong of the 20 domestic industry. And I am now on slide 4. 21 What are you showing here, Mr. Crosby? 22 A. Here is a table which shows the asserted claims 23 and the accused and domestic industry products. And what I 24 understand is Respondents' experts dispute infringement only 25 for some of the asserted claims of the Family Two patents