

OPEN/CLOSED SESSIONS

1109 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 Monday, December 11, 2023 18 Volume V 19 20 The parties met remotely pursuant to notice of 21 the Administrative Law Judge at 9:30 a.m. Eastern. 22 23 24 Reported by: Linda S. Kinkade RDR CRR RMR RPR CSR 25	1111 1 A P P E A R A N C E S (continued): 2 3 Counsel for Respondent EndyMed Medical Inc.; EndyMed Medical 4 Ltd.: 5 PEARL COHEN ZEDEK LATZER BARATZ LLP 6 7 Times Square, 19th Floor 7 New York, New York 10036 8 (646) 878-0800 9 Guy Yonay, Esq. 10 Kyle Auteri, Esq. 11 12 Counsel for Respondent Cutera, Inc.; Ilooda Co., Ltd.: 13 COVINGTON & BURLING LLP 14 850 Tenth Street, NW 15 Washington, DC 20001 16 (202) 662-6000 17 W. Kiersten Choi, Ph.D., Esq. 18 Brian Nester, Esq. 19 20 21 22 23 24 25 CONTINUED ON FOLLOWING PAGE
1110 1 A P P E A R A N C E S: 2 [All participants appeared via videoconferencing or 3 telephonically.] 4 Counsel for Complainant Serendia, LLC: 5 LATHAM & WATKINS LLP 6 555 11th Street, NW 7 Washington, DC 20004 8 (202) 637-2200 9 Michael A. David, Esq. 10 Cecilia Sanabria, Esq. 11 Kevin C. Wheeler, Esq. 12 Bradley A. Hyde, Esq. 13 14 Counsel for Respondent Cynosure, LLC; Jeisys Medical Inc.: 15 LEYDIG, VOIT & MAYER, LTD. 16 Two Prudential Plaza 17 Chicago, Illinois 60601 18 (312) 616-5600 19 David M. Airan, Esq. 20 James W. Sanner, Esq. 21 Brian Rupp, Esq. 22 Wallace Feng, Esq. 23 Leonard Hua, Esq. 24 Paul Bartkowski, Esq. 25	1112 1 A P P E A R A N C E S (continued): 2 3 -and- 4 Counsel for Respondent Cutera, Inc.; Ilooda Co., Ltd.: 5 COVINGTON & BURLING LLP 6 3000 El Camino Real 7 Palo Alto, California 94306 8 (650) 632-4700 9 Anupam Sharma, Esq. 10 11 -and- 12 COVINGTON & BURLING LLP 13 415 Mission Street, Suite 5400 14 San Francisco, California 94105 15 (415) 591-6000 16 Dale A. Rice, Esq. 17 Thomas E. Garten, Esq. 18 19 20 21 22 23 24 25 CONTINUED ON FOLLOWING PAGE

OPEN/CLOSED SESSIONS

1113 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	1115 1 JUDGE MCNAMARA: Jae or Nicole, would you please 2 admit all the participants to the hearing? Please get 3 together and confer. It will be a few minutes. 4 MS. SANABRIA: I'm hearing a lot of feedback. 5 MR. WHEELER: Judge McNamara, can you hear me? 6 JUDGE MCNAMARA: Mr. Wheeler, I now can hear you, 7 yes, but, again, most everybody else seems to be absent. In 8 other words, they haven't turned on their video or perhaps 9 they haven't been admitted yet. 10 Nicole, what's the status? 11 MS. MUHAMMAD: I'm not seeing anyone to be 12 admitted. 13 JUDGE MCNAMARA: Slowly people are coming in. As 14 you check in, would you please identify yourself? 15 Mr. Wheeler, you already have. Who else is on 16 who can hear me? 17 MR. AUTERI: This is Kyle Auteri here for 18 EndyMed, also here with Guy Yonay. 19 MR. YONAY: Good morning, Your Honor. 20 JUDGE MCNAMARA: Good morning. That was 21 Mr. Yonay? 22 MR. YONAY: Yes, it was. 23 JUDGE MCNAMARA: Please identify yourselves. 24 MR. NESTER: Good morning, Your Honor. This is 25 Brian Nester with Ilooda and Cutera, and with me are Mika
1114 1 P R O C E E D I N G S 2 (In session at 9:30 a.m.) 3 JUDGE MCNAMARA: We're here on the continued 4 hearing. For the Complainant, would you kindly identify 5 yourself and introduce your team again? We've gone through 6 this before, but just to be sure. 7 Hello? No one is speaking up. Counsel for 8 Complainant? Hello? No one is speaking up. 9 Ms. Kinkade, no one is speaking up from the 10 Complainant's side. And I'm also seeing that nobody seems 11 to be available on video. They haven't turned on their 12 video. 13 MR. NESTER: This is Brian Nester. We can start 14 with the Respondents, if you prefer, while the Complainants 15 get their technology together. 16 JUDGE MCNAMARA: That would be great. For the 17 EndyMed Respondents, good morning. 18 MS. SANABRIA: Your Honor, this is Cecelia 19 Sanabria for Serendia. We are waiting to be admitted in the 20 waiting room. 21 JUDGE MCNAMARA: Really? Nicole or Jae, would 22 you please take care of this? You should have been right 23 in. 24 MS. SANABRIA: Apologies. We can't hear 25 anything.	1116 1 Ceta and Kiersten Choi. And I will turn it over to Jeisys. 2 MR. AIRAN: Good morning, Your Honor. David 3 Airan on behalf of Jeisys, and with me in counsel room here is 4 Leonard Hua and Paul Bartkowski, and I also have James 5 Sanner with me as well in the conference room. 6 JUDGE MCNAMARA: Very good. Thank you. 7 There are some other folks on. And I want to be 8 sure that everybody is coming in. Nicole, we're still 9 having problems. 10 MS. MUHAMMAD: Judge, I do not have a feature 11 where we have to let them in. They just come in. There is 12 no one waiting in the waiting room. 13 JUDGE MCNAMARA: Okay. Then I'm not sure what's 14 going on here. 15 Mr. Rupp, are you there? 16 Ms. Rice? 17 Mr. Rauh, I can see that you're there. 18 MR. RAUH: Good morning, Judge McNamara. This is 19 Aaron Rauh on behalf of the Commission Investigative Staff, 20 and with me is Jeff Hsu. 21 JUDGE MCNAMARA: Yes. Good morning, Mr. Hsu. 22 MR. HSU: Good morning, Your Honor. 23 JUDGE MCNAMARA: Good morning. How are you? 24 MR. HSU: Good. Thank you. 25 JUDGE MCNAMARA: I see Mr. Garten is there, but

OPEN/CLOSED SESSIONS

1297 1 Q. What does it depict? 2 A. Well, if you look on the left it depicts, if I 3 read, the degree of RF energy, focused at the edge of the 4 microneedles. 5 Q. And you can lower that portion of it. 6 Now if RF energy were to be continually applied 7 for an extended period of time, what would you expect to see 8 of those areas of RF energy? 9 A. Well, the energy -- you will have an increase in 10 energy if that was to -- those figures were to show the 11 level of energy, you will see the level that is increasing 12 and increasing and increasing until the end of the RF energy 13 delivery, if that's what you're asking. 14 Q. Is that description similar to what you're 15 showing on the right side of this slide? 16 A. Yes, in a -- at some point in time, the energy 17 level will reach the orange level, whatever it is, that will 18 be -- that will include the area between two needles. 19 MR. FARNOLY: No further questions, Your Honor. 20 JUDGE MCNAMARA: Thank you, Mr. Farnoly. 21 Mr. Hyde? 22 MR. HYDE: No further questions. 23 JUDGE MCNAMARA: Anything more, Mr. Rauh? 24 MR. RAUH: Aaron Rauh for the Staff, Your Honor. 25 No further questions for this witness.	1299 1 Good afternoon, Dr. Goldberg. 2 THE WITNESS: Good afternoon, Your Honor. 3 JUDGE MCNAMARA: I can't hear you. I think you 4 need to sit closer to the computer. 5 THE WITNESS: It wasn't on. Good afternoon, Your 6 Honor. 7 JUDGE MCNAMARA: Good afternoon. You are still 8 under oath so you're fine for your counsel to proceed. 9 DAVID GOLDBERG, 10 having been previously duly sworn or affirmed 11 on his oath, was thereafter examined and testified further 12 as follows: 13 MR. HYDE: Thank you, Your Honor. Bradley Hyde 14 again from Serendia. And we can start on the public record. 15 DIRECT EXAMINATION 16 BY MR. HYDE: 17 Q. Good afternoon, Dr. Goldberg. Can you please 18 reintroduce yourself for the record? 19 A. I'm Dr. David Goldberg. 20 Q. Did you prepare a presentation to go with your 21 testimony today? 22 A. I did. 23 Q. Let's pull up CDX-44C. Is this that 24 presentation? 25 A. That's correct.
1298 1 JUDGE MCNAMARA: Thank you for that. 2 All right. Dr. Berube, you may step down. Thank 3 you. 4 THE WITNESS: Thank you. 5 MR. WHEELER: Your Honor, Kevin Wheeler for 6 Complainant. I have one issue just to flag as Dr. Berube 7 leaves the stand. 8 JUDGE MCNAMARA: Sure. 9 MR. WHEELER: Dr. Goldberg should go up and get 10 down today with no problem, if folks stick to their time. 11 Unfortunately, Respondents are, again, about 40 minutes 12 over. And so our ask, because he has a flight to catch, is 13 that we do him out of order and we put him on before 14 Dr. Vander Veen. 15 JUDGE MCNAMARA: I don't have a problem with 16 that. 17 Would Respondents have a problem with that, 18 Mr. Nester? 19 MR. NESTER: Your Honor, Brian Nester. We can 20 start with their expert, if they want. It's fine with us. 21 JUDGE MCNAMARA: Great. I appreciate that. I'm 22 sure Dr. Goldberg does as well, as I'm sure does Serendia. 23 MR. WHEELER: We do. Thank you. At this time, 24 then, Your Honor, we would call Dr. Goldberg. 25 JUDGE MCNAMARA: All right. Thank you.	1300 1 Q. And you previously testified in this 2 investigation on November 1st. 3 A. I did. 4 Q. And at that time we discussed your background and 5 credentials. Do you remember that? 6 A. Yes, I do. 7 Q. And at that time you were accepted as an expert 8 in the field of dermatology and histological evaluation of 9 tissue. Do you remember that? 10 A. Yes. 11 Q. Moving on to slide 2, can you tell us what was 12 your assignment in this investigation for your rebuttal 13 analysis? 14 A. I was assigned to provide an independent expert 15 opinion about the Ganz patent, the U.S. Patent, as well as 16 providing an independent expert opinion concerning objective 17 indicia of non-obviousness relating to the '836 Na patent. 18 Q. Did you come to any conclusions after your 19 analysis? 20 A. I did. 21 Q. What were those conclusions? 22 A. So Ganz is directed to cauterizing and removing 23 tissue. It is not directed to the same types of treatments 24 claimed in the '836, the Na patent. And the objective 25 indicia were that there clearly is a nexus between the '836

OPEN/CLOSED SESSIONS

1301 1 patent and any commercial success of the products at issue 2 here. There is clearly industry praise and peer recognition 3 for the '836 patent technology, and there was a long-felt 4 need for the '836 patent technology. 5 Q. So moving on to slide 3, can you briefly tell us 6 what categories of materials you considered in forming your 7 opinions? 8 A. So they are listed here. These general materials 9 that I considered included the Ganz patent that I just 10 alluded to, the Respondents' and Serendia's public and 11 confidential documents, including the FDA submissions, 12 deposition testimonies, my personal use of many of these 13 products, the marketing materials for the products, the '836 14 patent and its file history, and then, finally, 15 Dr. Woloszko's direct testimony and his demonstratives. 16 Q. And I see CX-3039 mentioned at the bottom. Is 17 this your Materials Considered? 18 A. Yes. 19 Q. Moving on to slide 4, you previously testified 20 about RF microneedling systems. Can you briefly explain to 21 us what kind of RF microneedling systems have been available 22 in the last couple decades? 23 A. Yes. So Na describes in this article in Science 24 about radiofrequency energy, that it can be emitted into the 25 skin either non- or invasively via a monopolar mode that	1303 1 three seconds, five seconds, but going between those 2 electrodes, and, because of that, we often saw arcing, we 3 saw burns, blistering and a lot of pain. 4 Q. For the record, the documents that you are citing 5 on this slide discussing some of the issues with prior 6 bipolar systems are CX-209C and CX-752? 7 A. Yes. 8 Q. Moving on to slide 7, what is your understanding 9 of how Dr. Na addressed this problem? 10 A. So this is back to the Nature article by Na, 11 which showed thermal coagulation columns that were found to 12 be concentrated maximally around the tips of each of those 13 electrodes. 14 You can see that beautiful picture on the right, 15 that area of coagulated collagen in those circles there, and 16 yet no impact on the epidermis, that outer layer, no break 17 in the skin, just beautiful zones of coagulation. 18 JUDGE MCNAMARA: Pardon me, Dr. Goldberg. You're 19 looking at CDX-44C.67, and you're looking at -- you were 20 looking at B, the example in the depiction in B, and you 21 were looking at the two circles in that depiction, correct? 22 A. Right. So the two circles in B are those areas 23 of coagulation separated by normal collagen, and then I 24 flipped back to A to show that there is no break in the 25 skin. There is no destruction of the skin. There is no
1302 1 utilizes an active electrode placed somewhere and a grounded 2 electrode placed somewhere else or via bipolar mode that 3 employs two active electrodes near each other. 4 Q. So moving on to slide 5, can you tell us a little 5 bit more about prior monopolar microneedling devices? 6 A. So this is first generation that we used. If you 7 look at the picture on the right, you can see that active 8 electrode, the handpiece, placed on the arm there. And the 9 grounding pad, which is the second electrode placed 10 somewhere else, in this case the leg, sometimes the back. 11 And this could be a problem because the energy is going 12 through the whole body to get to that grounding pad. And 13 certainly heat was a challenge as patient discomfort often 14 was high. 15 Q. For the record, the documents you're citing on 16 this slide discussing some of these issues with prior 17 monopolar systems are CX-209, CX-2647 and CX-2656C? 18 A. That's correct. 19 Q. So moving on to slide 6, can you tell us a little 20 bit more about prior bipolar RF microneedling systems? 21 A. So this is now the second generation of devices 22 that we use clinically. These are bipolar radiofrequency 23 microneedling systems, and you can see from the picture 24 here, these two needles penetrating into the skin near each 25 other, the energy being delivered for either one second,	1304 1 vaporization. 2 JUDGE MCNAMARA: I just needed that narrative on 3 the record. 4 MR. HYDE: Thank you, Your Honor. 5 Q. So, Dr. Goldberg, is this method ablating and 6 removing the tissue that's being treated? 7 A. The method is not ablating and not removing 8 tissue. 9 Q. In your experience was this new treatment method 10 adopted by dermatological practices? 11 A. So this treatment method, which came onto the 12 market in 2015, 2016, frankly, has radically revolutionized 13 the way we use these devices for skin tightening, acne 14 scarring, aging skin, a whole different variety of entities 15 and all different skin types and colors. 16 Q. Moving on to slide 8, we talked about this 17 previous in your testimony, but can you remind us what are 18 the types of effects the '836 patent explains can occur when 19 applying RF energy to tissue? 20 A. So the '836 patent talks about these three 21 different phenomena. One of them is carbonization, one of 22 them is vaporization, and one of them is what we want here, 23 which is coagulation. 24 Q. Moving on to slide 9. Again, we discussed this 25 graphic in your prior testimony, but can you again briefly

OPEN/CLOSED SESSIONS

1305 1 explain what these different effects are? 2 A. So this gets back to that Na patent, '836. If 3 you get somewhere around 40 degrees, you have some proteins 4 denaturation, partial denaturation, heating of collagen. 5 That's kind of like a heating pad. It doesn't do anything 6 for your patients cosmetically. 7 As we get to somewhere around 60 degrees, we 8 coagulate tissue. That leads to healthy new tissue, and 9 that's what we need for antiaging and for acne scarring, 10 skin tightening. 11 What we don't want to do is get to 100 and 200 12 degrees. That's vaporization, that's carbonization, that's 13 ablation. That destroys tissue. That leads to scars. 14 Q. Are there reasons that a physician may want to 15 cause heating above the coagulation zone? 16 A. Yes. 17 Q. What would those reasons be? 18 A. So, you know, we do surgery, and when we do 19 surgery with a scalpel, with a knife, there's bleeding. We 20 need to cauterize the tissue. When you cauterize tissue, 21 you get to vaporization and cauterization. That stops the 22 bleeding. 23 Q. Is cauterization the same as coagulation? 24 A. It is not. 25 Q. Moving to slide 10, what type of tissue effect is	1307 1 say about systems that cause overheating, for example, by 2 vaporizing and carbonizing the tissue? 3 A. So the '836 patent distinguishes those because 4 the serious side effect of those existing technologies was 5 overheating or burning of both the dermis and the epidermis 6 between the needles, and that clearly caused permanent skin 7 damage, and that's scarring. 8 And so existing technology at the time and why it 9 never became very popular was they created scars by 10 overheating and burning the skin. 11 Q. Moving on to slide 12, can you tell us about the 12 Ganz reference? 13 A. So the Ganz reference really is different. Ganz 14 refers to a device for creating a pattern of perforations in 15 tissue. Think of it this way. We cut the skin with a 16 knife. We cut the skin with a scalpel. And I talked about 17 the fact that we get bleeding. Ganz is a device that causes 18 those perforations of the skin but also lessens bleeding. 19 Q. So before we get any further into discussing 20 Ganz, as a clinician, do you have any comfort or familiarity 21 in evaluating patent applications? 22 A. Well, you know, I'm not a patent attorney, so I 23 can't speak to the legal issue, but I certainly can speak to 24 the clinical issues of Ganz and why we wouldn't be using it 25 in a clinical setting.
1306 1 the '836 patent seeking to achieve? 2 A. So if you look on the right side, so, Your Honor, 3 that's JX-0007, you can see those electrodes penetrating 4 into the skin, and you see that coagulative zone at the tip 5 at the bottom of these with normal areas in between. 6 Q. And what are you showing on the left, 7 Dr. Goldberg? 8 A. So on the left it talks about the temperature 9 being raised, the heat being concentrated in that area of 10 the dermis, the second layer of skin, in order to induce 11 coagulation. And the heat may not -- the heat may not be 12 concentrated between the needles. It is only around the 13 needles. 14 Q. Were you in the courtroom when Dr. Berube 15 testified that coagulation in the Illooda's preclinical 16 testing is different than coagulation in the '836 patent 17 because what you really want is partial denaturation? 18 A. I was. 19 Q. As a dermatologist, do you agree with that? 20 A. I do not. 21 Q. Why not? 22 A. Because I want coagulation to get that new 23 collagen. I want to be able to treat all these patients 24 just described that we could not treat prior to this. 25 Q. Moving on to slide 11, what does the '836 patent	1308 1 Q. Moving on to slide 13, why is Ganz creating 2 perforations in tissue? 3 A. So, you know, as you can see here, when those 4 perforations are made mechanically, scalpel, knife, rather 5 than with the use of energy, there's a lot of bleeding. We 6 all know that when we cut the skin. So there is a need for 7 a device according to Ganz which creates these perforations, 8 these cuts in the skin, without causing undue bleeding. 9 Q. How does Ganz create perforations without causing 10 undue bleeding? 11 A. Well, it creates these perforations because it 12 ablates, vaporizes, it carbonizes tissue. 13 Q. Are the perforations in Ganz similar to punctures 14 in skin you might see with microneedling systems you 15 currently use in your practice such as the Sylfirm X? 16 A. It is a cutting tool. You get these little 17 pinpoint nicks in the skin with the RF microneedling devices 18 we commonly use. Frankly, you can't even see them. 19 Q. So they are not similar? 20 A. They are not similar at all. 21 Q. Well, let's take a look at that actually. So 22 moving on to slide 14, can you tell us a bit about what Ganz 23 means by perforations? 24 A. So these perforations create holes, which extend 25 vertically into tissue, and the term perforation means

OPEN/CLOSED SESSIONS

1309 1 vertical areas of thermal damage or ablation. Again, 2 ablation, vaporization, causing tissue necrosis. 3 Q. What are you showing on the left here? 4 A. So that is histology, and you see those holes. 5 That's exactly what we don't want to see when we're treating 6 people with aesthetic devices. 7 Q. Moving on to slide 15. Does Ganz say anything 8 about systems which are designed to coagulate the tissue 9 rather than ablate and remove the tissue? 10 A. So Ganz differentiates itself from a really 11 popular laser called the Fraxel laser. The Fraxel laser 12 does not create perforations or vertical holes in the 13 tissue, but it does cause those beautiful zones of 14 coagulation that I talked about. 15 Q. Does Ganz describe this as a benefit? 16 A. Ganz describes this as a difference between it 17 and thermal laser and the Fraxel laser, and what Ganz said 18 was that it was desirable to create these vertical 19 perforations or holes into the skin in a sense to create a 20 more aggressive wound-healing response than was currently 21 seen but one, frankly, that can go on to scarring. 22 Q. Moving on to slide 16, why does Ganz distinguish 23 itself from systems which just cause coagulation without 24 ablating and removing the tissue? 25 A. So, you know, Ganz, as I said, said that it's	1311 1 with systems like the Fraxel laser using systems with a Ganz 2 technique shown on the right? 3 A. No, you can't do that, because you destroy the 4 tissue. Remember, we talked about coagulation getting 5 around 60 degrees. To get these holes, we have to vaporize 6 that tissue. 7 Q. When using the Ganz technique, is coagulation 8 formed around where the microneedles were inserted? 9 A. No, there's no coagulation around the 10 microneedles because the tissue is gone. 11 Q. Does any coagulation occur when using the Ganz 12 technique? 13 A. Well, you're always going to have a small amount 14 of the edges. That's why we stop the bleeding. 15 Q. Once again, is that around where the needles are 16 inserted? 17 A. That is not. 18 Q. So moving on to slide 18, what are you showing 19 here? 20 A. This is for people like me who want bigger 21 pictures. You can see, once again, on the left the Fraxel 22 laser. You can see those green ovals demarcated as 2. 23 That's a beautiful coagulated collagen on the Fraxel side. 24 And then if we get to the Ganz side, if you look 25 at the ovals in red, 4 represents that area of ablated
1310 1 desirable to create these vertical perforations or holes, 2 ablation, in the tissue, to get that more aggressive 3 wound-healing response, and this device, as I said, imparts 4 perforations rather than simply coagulation. 5 Q. You're, I think, referencing Ganz. That's RX-329 6 at paragraph 32 and 6? 7 A. Paragraph 32 and 6, that's correct. 8 Q. We've been looking at Fig. 9 of Ganz for these 9 perforations? 10 A. Again, Fig. 9 simply shows those holes, the 11 perforations. 12 Q. So moving on to slide 17, putting the Fraxel 13 effect on the left, Fig. 8, and the Ganz effect on the 14 right, Fig. 9, can you explain the difference between these 15 two effects? 16 A. So if we look at the Fraxel laser, which I said 17 before, so the green ovals there, you see those beautiful 18 areas of coagulated collagen, that's what's going to lead to 19 healthy new skin. That's why this laser actually has been 20 quite popular. 21 If you look at the Ganz effect, you see those 22 perforations, those areas of ablation, the areas of 23 destruction of skin, in a sense cutting through the tissue 24 and why this device has not become popular. 25 Q. Can you create coagulation you see on the left	1312 1 tissue, the perforation, the lost tissue, with a little tiny 2 bit of coagulation right at the edges there to try to stop 3 bleeding. 4 Q. Can you actually tell that there's any 5 coagulation in that photo as a dermatologist? 6 A. Not at all actually. 7 Q. Okay. So moving on to the next slide, slide 19, 8 how does the Ganz approach compare to the Na Effect? 9 A. So if you look at the histology here of the Na 10 approach, again, look at the top, the epidermis, perfectly 11 normal. And then you look in the dermis, you see those 12 green circles, that is coagulated collagen. That is our 13 basis for the healthy new skin. 14 Q. And you're referencing the Na Nature article, 15 CX-832 at 3, and you're comparing that with the Ganz 16 reference, RX-329 at Fig. 9? 17 A. That is correct. 18 Q. One question before I ask about this next slide. 19 As a clinician, would you use a system like Ganz in your RF 20 microneedling practice? 21 A. Never. 22 Q. Why not? 23 A. My goal is to make people look better. The one 24 thing I don't want to do is give them too much scarring, too 25 much downtime, and too much pain.

OPEN/CLOSED SESSIONS

1313 1 Q. So moving on to slide 20, which is being shown 2 right now, how does the Ganz effect on tissue compare to how 3 the accused products affect tissue? 4 A. So, the Ganz effect, again, we've talked about 5 that, you can see the areas there that are ablated, the 6 perforations. If you look at the EndyMed device, you see 7 that beautiful zone of coagulation, you see the normal outer 8 layer of the epidermis. That's what we want. 9 Q. You're referencing CX-690C at 7 again compared to 10 Fig. 9 of Ganz RX-329? 11 A. Yes. 12 Q. So moving on to slide 21, once again, what is 13 your opinion with respect to the Ganz reference? 14 A. So the conclusion about Ganz is that Ganz is 15 directed to cauterizing and removing tissue, and that's very 16 different than the types of treatments that are claimed in 17 the '836 patent, which are causing coagulation localized 18 around each needle electrode. 19 Q. So moving on to slide 22, let's shift gears a bit 20 and talk about the objective indicia of non-obviousness. In 21 your opinion, is there a connection or nexus between the 22 benefits of the '836 patent and any commercial success of 23 the current art of microneedling devices? 24 A. So the products that practice the '836 patent are 25 clearly safer and more effective. We know that clinically.	1315 1 the needles penetrate from the skin, how many of these 2 needles are on the handpiece, but at the core we still need 3 the '836 patent. 4 Q. Moving to slide 25 and starting with the 5 Sylfirm X product, is there any relationship between the 6 Sylfirm X advertisements and the '836 patent specifically? 7 A. So the Sylfirm X marketing shows that nexus. You 8 can see it right there on the right. They have right on 9 their marketing materials that it is patented, and the 10 patent number is there, '836. 11 Q. And what are the benefits associated with the 12 '836 patent are described as features of the Sylfirm X? 13 A. So in the marketing materials, and, frankly, what 14 we see in clinical practice, they are minimally invasive, 15 pretty quick treatment times. Makes it good for us in the 16 office, not a lot of downtime. People don't have to stay 17 away from life every day. Pretty safe and comfortable and 18 sometimes, frankly, even immediate results. 19 Q. You're referencing CX-830 on this slide? 20 A. Yes. 21 Q. I see another document at the bottom, CX-3413. 22 Is that another piece of evidence you considered on this 23 point? 24 A. Yeah, that's part of ViOL patent marketing, yes. 25 Q. Slide 26, what are you showing here?
1314 1 And that represents an improvement over the RF-based and 2 laser treatments that were previously available. 3 Any commercial success of the products at issue 4 is at least partially attributable to the incorporation of 5 the '836 patent's technology and the devices we use every 6 day in the office. 7 Q. So moving on to the next slide, 23, what are you 8 showing here? 9 A. So in the center is the '836 patent, and then 10 around the center, the spokes of the wheel are all these 11 different products that have come to the market since this 12 patent came to be. The green ones, of course, are the 13 licensed products, and the others are not, but that's why we 14 have so many different products on the market now. 15 Q. Moving on to slide 24, can you explain why it is 16 your opinion that there is a nexus between the benefits of 17 the '836 patent and any commercial success of these 18 products? 19 A. Well, as I've discussed, I mean, the '836 patent 20 has led to all these devices, which make these treatments 21 more effective, reduce patient pain and downtime, increase 22 the patient compliance, and make us all busier every day. 23 Q. Are there other factors that may also contribute 24 to selecting an RF microneedling product as a clinician? 25 A. Sure. I mean, there are things such as how deep	1316 1 A. So this is also part of Sylfirm X's marketing 2 materials, and it actually refers to the Na Effect, and it 3 states that the primary takeaway of the Na Effect is that it 4 maximizes the thermal effect on the target with little to no 5 epidermal damage enabling what we want -- effective and safe 6 treatment. 7 Q. And this is CX-830 again, the Sylfirm brochure? 8 A. That's the brochure. 9 Q. So the brochure explicitly mentions the '836 10 patent and explicitly mentions the Na Effect? 11 A. It does. 12 Q. Are the citations at the bottom of the slide 13 additional evidence that you considered on this point? 14 A. These are all different marketing materials about 15 Sylfirm X, and they all lead to the same conclusion. 16 Q. So I believe you testified about this before, but 17 you've used the Sylfirm X product in your practice, right? 18 A. Yes. 19 Q. Why do you use the Sylfirm X in your practice? 20 A. Well, for all the reasons I just stated. It's 21 easy to use, little downtime, does a lot of things we want 22 cosmetically. We're always looking for safety and efficacy. 23 It's fast. It doesn't hurt very much. 24 Q. And are those things features you link with the 25 '836 patent?

OPEN/CLOSED SESSIONS

1317 1 A. I do. 2 Q. Are you aware of any other clinicians using the 3 Sylfirm X because of the benefits of the '836 patent? 4 A. The success of these devices is because a lot of 5 my peers are using them. 6 Q. What are you showing on this slide? 7 A. So this is Marty Braun, who does a lot of 8 cosmetic work in Canada. And in this article, this article 9 in Prime, which is one of our journals, he talked about the 10 Sylfirm X in terms of the Na Effect, providing safe 11 effective treatment, because the teardrop-shaped thermal 12 effect minimizes heat damage to the epidermis and maximizes 13 what we want, which is the therapeutic effect at the target, 14 which is the dermis. 15 Q. You're citing on this slide CX-2858C? 16 A. Yes. 17 Q. In your opinion, to the extent that the Sylfirm X 18 product has experienced commercial success, is that success 19 attributable at least in part to the implementation of the 20 '836 patent? 21 A. Yes. 22 Q. Moving on to slide 28, let's talk about some of 23 the marketing materials from companies that have licensed 24 the '836 patent. Is there any -- 25 MR. NESTER: We would lodge an objection.	1319 1 numbers generated from the lease and license, the Board 2 should have addressed this evidence. 3 Then we have an ITC opinion from the Commission 4 here. Success of licensee domestic industry products go to 5 factor, weight, and commensurate. 6 So the fact that they have been settled out may 7 have impacted evidence that is coming in on infringement, 8 but they are highly relevant to commercial success and 9 nexus, Your Honor. 10 There is no question that Dr. Goldberg opined on 11 these issues in his report here. We think that, at most, it 12 goes to the weight of the evidence, and, in view of the case 13 law, it's relevant. 14 JUDGE MCNAMARA: Can you address that? 15 MR. NESTER: So Dr. Goldberg is not here to talk 16 about licensing. What these slides are about is a 17 relationship of the products to the patented technology. So 18 the nexus issue is really no different. They are trying to 19 show that there is a nexus between this technology, how the 20 products operate, and the patent. And for the same reason 21 that there shouldn't be infringement proof on it, there 22 shouldn't be secondary considerations raised by Dr. Goldberg 23 on this. If they want to talk about the licenses they have 24 obtained, they can do that, but that's not what Dr. Goldberg 25 is here for.
1318 1 JUDGE MCNAMARA: I'm sorry? 2 MR. NESTER: It's Brian Nester on behalf of 3 Respondents. Slides 28, 29 and 30, as we informed Serendia 4 last night, we object to the use of them. They are about 5 products that were accused, but they are from parties that 6 have settled out. So consistent with all the prior rulings 7 in this case, we submit that these should not be introduced 8 into evidence. 9 MR. HYDE: Your Honor, if I may respond? 10 JUDGE MCNAMARA: Of course. 11 MR. HYDE: Our position is this is a wildly 12 different situation than before here. There have been 13 situations in this investigation where documents have come 14 in, even though they relate to other products under other 15 contexts. 16 These are coming in because they are licensed 17 products. And there is plenty of case law in the Federal 18 Circuit, even the ITC, that a licensee's commercial success 19 is relevant to this issue here. 20 Can you pull up slide 38 actually? 21 So if we take a look at some of these, for 22 example, the Federal Circuit's opinion in Harris, Harris's 23 successful licensing program is evidence of commercial 24 success. Similarly, Oren Techs, another Federal Circuit 25 opinion from 2021, Oren presented significant revenue	1320 1 JUDGE MCNAMARA: I think I'm going to 2 provisionally allow this. I want to look at these cases. 3 Do you have any rebuttal cases to these cases? 4 MR. NESTER: Not with me. 5 JUDGE MCNAMARA: Well, I'm sure you don't. So 6 I'm going to allow it provisionally, and I believe it goes 7 to the weight of the evidence. I believe Dr. Goldberg is 8 qualified to talk about this as a practitioner in the field 9 who has used these products. So, from that standpoint, he 10 certainly has knowledge of use, and he certainly has 11 knowledge as a POSITA or a person of ordinary skill in the 12 art. 13 So I'm going to allow this provisionally. And if 14 you wish to file a motion to strike, you may, but I think 15 you're going to have a hard time on this one, frankly. 16 MR. NESTER: Thank you, Your Honor. 17 MR. HYDE: Thank you, Your Honor. 18 Q. Can we go back to slide 28? 19 So moving on to slide 28 again, for the record, I 20 want to talk about some of the marketing materials for 21 companies who have licensed the '836 patent. 22 Is there any relationship between the SHENB 23 product materials you reviewed and the '836 patent? 24 A. So, yeah, as you said, this is the licensed SHENB 25 product, the Vivace advertisement on the left. You can see

OPEN/CLOSED SESSIONS

1321 1 those needles penetrating into the skin and that area of 2 coagulation around the needles with spaces in between the 3 needles. 4 Q. And you're referencing CPX-73 on the left? 5 A. That's the Vivace video, yes. 6 Q. And what are you showing on the right here? 7 A. So on the right there's a study, this is 8 ABM-funded Vivace clinical study that stated in the results 9 there was narrow and concentrated coagulation, and that it's 10 important to avoid or minimize epidermal thermal damage. 11 So as to essentially say, what I've said before, 12 mitigate patient downtime and avoid the scarring that we see 13 with post-inflammatory hyperpigmentation or 14 hypopigmentation. 15 Q. And you're referencing the CX-353C? 16 A. Yes. 17 Q. And in your opinion would a medical provider be 18 more likely to use the SHEnB products because it provides 19 the benefits associated with the '836 patent? 20 A. Yes. 21 Q. And so in your opinion, to the extent that the 22 SHEnB products have experienced commercial success, is that 23 success at least in part attributable to the implementation 24 of the '836 patent? 25 A. No doubt.	1323 1 provider be more likely to use the Pixel8 because they 2 provide the benefits associated with the '836 patent? 3 A. Yes. 4 Q. Is that why you use the Pixel8? 5 A. Yes. 6 Q. In your opinion, to the extent that the Pixel8 7 products have experienced commercial success, is that 8 success attributable, at least in part, to the 9 implementation of the '836 patent? 10 A. Yes. 11 Q. And the citations at the bottom of the slide, 12 once again, is that additional evidence you considered on 13 this point? 14 A. Yes. 15 Q. So moving on to slide 30, with respect to the 16 licensed Genius RF microneedling device, starting with the 17 video shown on the left, is there any relationship between 18 the Genius marketing materials and the '836 patent that 19 you've seen? 20 A. So this is the Lutronic device, which, again, 21 I've used the earlier version of this, but it's the same 22 idea. Once again, you see the picture on the left of the 23 needles penetrating into the dermis, into the skin, the 24 areas of damage around the needles and the areas of normal 25 skin in between the needles.
1322 1 Q. And the citations at the bottom of the slide, is 2 that additional evidence you considered in this point? 3 A. Yes. 4 Q. So moving on to slide 29, with respect to other 5 licensed products, is there any relationship between the 6 Pixel8 product marketing materials and the '836 patent that 7 you've seen? 8 A. So this, again, as you said, this is another 9 licensed product, the Pixel8, and you can look at the 10 picture here. Once again, you see these needles penetrating 11 into the skin. The red boxes around them are surrounding 12 the needles, and you have normal brown, normal dermis, 13 normal skin in between. 14 Q. And you're referencing CPX-64 here? 15 A. Yes. 16 JUDGE MCNAMARA: Pardon me. Dr. Goldberg -- just 17 a moment -- have you used the Pixel8 by any chance? 18 A. I actually have used the Pixel8. 19 JUDGE MCNAMARA: And so what you're testifying to 20 is that it does essentially have the same benefits as the Na 21 patent or the Na Effect? 22 A. They are all very similar, Your Honor. 23 JUDGE MCNAMARA: Okay. Go ahead. 24 Q. Thank you, Your Honor. 25 Dr. Goldberg, in your opinion, would a medical	1324 1 Q. And with respect to the brochure shown on the 2 right, how does this relate to any relationship between 3 Genius marketing materials and the '836 patent in your 4 opinion? 5 A. So if you look at the two pictures on the right 6 and you look at the one all the way to the right, you, once 7 again, see those beautiful zones, those oval zones of 8 coagulation. That's going to lead to the new healing. 9 That's going to lead to our clinical improvement. 10 In contrast to some of the older devices that 11 we've talked about, where you see that very broad area of 12 coagulation, and that's exactly what we don't want. That's 13 uncontrolled, imprecise energy, and that's going to lead to 14 scarring. 15 Q. And you're referencing on this slide CPX-55 and 16 CPX-2644C? 17 A. Yes. 18 Q. And, in your opinion, would a medical provider be 19 more likely to use the Genius product because they provide 20 the benefits associated with the '836 patent? 21 A. Yes. 22 Q. And, in your opinion, to the extent that the 23 Genius product has experienced commercial success, is that 24 success attributable, at least in part, to the 25 implementation of the '836 patent?

OPEN/CLOSED SESSIONS

1325 1 A. Once again, yes. 2 Q. Once again, the citations at the bottom of this 3 slide, is this additional evidence you considered on this 4 point? 5 A. It's additional evidence on the Lutronic product, 6 yes. 7 Q. Moving on to slide 31, shifting to the accused 8 products now, is there any relationship between the accused 9 Secret marketing material shown here and the '836 patent 10 that you've seen? 11 A. So this is on the left a picture from the Secret 12 RF video, another device I have used. Once again, you see 13 the needles penetrating into the skin. You see those 14 orange-yellow areas, the damage around the needles, and some 15 normal areas in between those needles. 16 Q. And you're referencing on this slide CPX-22C? 17 A. Yes. 18 Q. And with respect to the accused Potenza product 19 as shown on the right, what observations did Cynosure make 20 regarding what its messaging should be about its products? 21 MR. AIRAN: Objection, Your Honor. 22 JUDGE MCNAMARA: I'm sorry. 23 MR. AIRAN: Objection, Your Honor. David Airan. 24 JUDGE MCNAMARA: Yes. 25 MR. AIRAN: As I'm reading the slide, I see where	1327 1 So is that your objection, Mr. Airan? 2 MR. AIRAN: You got it exactly correct, 3 Your Honor. Thank you. 4 JUDGE MCNAMARA: Okay. 5 MR. HYDE: Your Honor, I think he is free to ask 6 that on his cross-examination, but I would point out that -- 7 JUDGE MCNAMARA: I'm sorry, Mr. Hyde. I 8 apologize. Go ahead, and then I'll tell you what I think. 9 MR. HYDE: Understood, Your Honor. He is welcome 10 to ask that on cross, but the point here is that this 11 document is asking what is our messaging when to use and 12 what and why. 13 So this is Cynosure asking what are we going to 14 put in our market, what are we going to tell the public 15 about the product here, and this is what they are wanting to 16 tell the public about the product, very local to electrodes 17 and not observed affecting tissue between electrodes. 18 That's what they're saying should be there. 19 JUDGE MCNAMARA: Okay. Mr. Hyde, the problem I'm 20 having is that your question -- your questioning goes to 21 different -- slightly different issues. There is an intent 22 issue here. There are a number of issues here between what 23 is being discussed internally in the company and then what 24 is being represented externally, and there may or may not be 25 a problem there, I don't know, but I think you have to get
1326 1 this questioning is going. The second bullet point there, 2 the second box on the right, is not a marketing document. 3 This is an internal document that was questioning the study. 4 JUDGE MCNAMARA: Okay. So should this also be 5 confidential? It's confidential as well. 6 So do you have an answer to that, Mr. Hyde? 7 MR. HYDE: I'm not sure what the objection is, 8 Your Honor. 9 JUDGE MCNAMARA: I think what he's saying is -- 10 I'm sorry. Go ahead. 11 MR. HYDE: Sorry. I said with respect to the -- 12 my specific question, Your Honor, was with respect to the 13 accused Potenza product as shown on the right. What 14 observations did Cynosure make regarding its messaging 15 should be about its products. I didn't say that this was a 16 marketing material. And I'm sure that counsel for 17 Respondents can get up and ask any questions they want about 18 this document, but I wasn't trying to misrepresent it as 19 anything other than that what it is. 20 JUDGE MCNAMARA: But I think, if I heard 21 Mr. Airan correctly, what he is objecting to is the fact 22 that this is not a marketing -- this is not marketing 23 material. It's internal evaluation information. So from 24 that standpoint, the documents may have different purposes 25 and different information. So I understand that.	1328 1 at the different materials and show the connection in some 2 way. 3 MR. HYDE: Absolutely, Your Honor. We'll do 4 that, Your Honor. 5 Q. So, Dr. Goldberg, talk a little bit about the 6 document on the screen. 7 JUDGE MCNAMARA: Pardon me. I'm sorry, Mr. Hyde, 8 again. 9 Does this resolve your objection, then, 10 Mr. Airan? 11 MR. AIRAN: As long as he is moving on from that, 12 yes. I heard you say that he's got to connect this somehow. 13 This is an internal document. If he is going to try to do 14 that, I don't see how he could with this document, but I'm 15 going to maintain the objection until he goes forward, 16 unless you have sustained it already. I guess you have in 17 part, but I guess we'll see where he goes. 18 JUDGE MCNAMARA: I think there is an issue here. 19 I understand what you're trying to do, Mr. Hyde, but there's 20 a problem with how you're getting there. And there's a lot 21 of lot latitude, as you know, here. It is not clear to whom 22 this internal document has been shown. 23 And, again, there may be a problem with a Potenza 24 product and how it's been marketed, but I don't know that, 25 and I don't know how this evolved.

OPEN/CLOSED SESSIONS

1329 1 MR. HYDE: I assume that this is an objection on 2 relevance? 3 JUDGE MCNAMARA: No, I don't think so. 4 Mr. Airan, was this -- I'm sorry. Was this an 5 objection on relevance? 6 MR. AIRAN: It goes to the substance of the 7 matter here and the marketing issue that they are talking 8 about. 9 MR. HYDE: So you're objecting on substance. Got 10 it. 11 JUDGE MCNAMARA: Well, that's what I am hearing, 12 Mr. Hyde, very clearly. You're using an internal product or 13 an internal document that may or may not be viewed 14 externally. We don't know. And that hasn't been 15 established. 16 MR. HYDE: Understood, Your Honor. We're happy 17 to move on. 18 Q. Dr. Goldberg, I see a bunch of citations at the 19 bottom of this slide here. Is that additional evidence that 20 you considered on these points regarding marketing materials 21 for the Potenza product? 22 A. Yes. 23 Q. Okay. And are the marketing materials you 24 reviewed for the Potenza product also in line with your 25 conclusions here regarding whether the Potenza product	1331 1 A. So this is an EndyMed study published in a 2 peer-reviewed journal referring to their RF microneedling 3 device and showing that their data showed comparable or 4 better clinical results with lower pain level, lower 5 downtime, lower post-inflammatory hyperpigmentation compared 6 to fractional ablative or nonablative lasers. It's an RF 7 microneedling device. 8 Q. And you're referencing on this slide CX-2590C? 9 A. Yes. 10 Q. In your opinion, would a medical provider be more 11 likely to use the EndyMed product because it provides 12 benefits associated with the '836 patent? 13 A. Yes. 14 Q. In your opinion, to the extent that the EndyMed 15 products have experienced commercial success, is that 16 success attributable, at least in part, to the 17 implementation of the '836 patent? 18 A. Yes. 19 Q. Moving on to slide 33, shifting topics just a 20 little bit. 21 Have the patented functionalities claimed in the 22 '836 patent achieved industry praise or peer recognition? 23 A. So on the left you can see an award that ViOL got 24 for the Sylfirm X. It was the World Class Product of Korea 25 in 2020 given to them by the Minister of Trade, Industry and
1330 1 practices or implements the '836 patent? 2 A. And of note, some of those references are 3 physicians like myself. Mark Taylor, a well-known cosmetic 4 dermatologist in Utah, Oku had a paper on it, Murgia. So 5 these are my peers. 6 Q. I've asked this question on a few other products 7 here. In your opinion, would a medical provider be more 8 likely to use the Secret products and the Potenza products 9 because they provide the benefits associated with the '836 10 patent? 11 A. Yes. 12 Q. And, in your opinion, to the extent that the 13 Secret products and Potenza products have experienced 14 commercial success, is that success attributable, at least 15 in part, to the implementation of the '836 patent? 16 A. Yes. 17 Q. Again, I think I already asked this, but the 18 citations at the bottom of the slide for both the Secret and 19 the Potenza device, are those additional marketing materials 20 that you reviewed to support your conclusion? 21 A. I did. 22 Q. So moving on to slide 32, finally, with respect 23 to the accused EndyMed device, is there any relationship 24 between literature you've seen regarding the accused EndyMed 25 products and the '836 patent?	1332 1 Energy, from the Republic of Korea. 2 Q. And you're referencing CX-2859? 3 A. That's correct. 4 Q. And has the industry recognized the advancements 5 claimed in the '836 patent in any other ways? 6 A. There have been so many studies now. As you can 7 see on the right many of these studies now documenting 8 exactly that. 9 Q. And are these studies shown as exhibit numbers 10 listed at the bottom of this page? 11 A. Yes. 12 Q. So moving on to slide 34, on the topic of 13 long-felt but unfulfilled need, we discussed bipolar and 14 monopolar electrode systems. What were some of the 15 drawbacks that we discussed of the monopolar systems, if you 16 can briefly remind us? 17 A. So going back to the -- this is the original 18 aesthetic radiofrequency device, monopolar device, active 19 electrode. Again, this cartoon placed on the arm, often we 20 obviously put it on the face, but a distant electrode 21 somewhere else, that's the grounding pad, here put on the 22 leg, and that led to unwanted electrical stimulation in 23 other parts of the body. 24 If someone has some sort of electrical device in 25 their brain, a pacemaker, even putting their hand on a metal

OPEN/CLOSED SESSIONS

1333 1 table, they can get shocked and burned, and that's danger 2 due to electrical current flowing throughout the body. 3 Q. We see some exhibits at the bottom of this slide. 4 Is this evidence that you relied on for these opinions? 5 A. Yes. 6 Q. So moving on to slide 35, and, again, can you 7 remind us of some of the drawbacks of the prior bipolar 8 systems once again? 9 A. Second generation, now bipolar, so you see two 10 electrodes penetrating into the skin, energy going between 11 those electrodes, arcing between those electrodes, and that 12 arcing and that heat going between the electrodes have the 13 risk of leading to burns and blisters, damaging the skin 14 with pigmentation issues. Certainly more painful, more 15 downtime because of the wounds. 16 Q. And the evidence listed at the bottom of the 17 slide, is this additional evidence you considered on this 18 point? 19 A. Yes. 20 Q. Now we talked a little bit ago about the partial 21 denaturation versus full denaturation, and I believe 22 Respondents' counsel noticed that you actually coauthored a 23 paper with Dr. Berube about ten years ago saying that 24 partial denaturation is better. Do you remember that? 25 A. I do.	1335 1 by the '836 patent. 2 The objective indicia, there is clearly a nexus 3 between the '836 patent and any commercial success of all 4 these products. There is industrywide praise and my peer 5 recognition for the '836 patent technology. And, boy, have 6 we needed this. There has been a long-felt need for '836 7 patented technology. 8 MR. HYDE: Pass the witness, Your Honor. 9 JUDGE MCNAMARA: Thank you very much. 10 MR. NESTER: Good afternoon, Your Honor. Brian 11 Nester on behalf of Respondents. 12 JUDGE MCNAMARA: Thank you, Mr. Nester. 13 CROSS-EXAMINATION 14 BY MR. NESTER: 15 Q. Good afternoon, Dr. Goldberg. 16 A. Good afternoon. 17 Q. Let's turn to RX-329, the Ganz reference. You've 18 given an opinion on this, right? 19 A. Yes. 20 Q. And you testified that you have no familiarity or 21 comfort evaluating the Ganz application, isn't that right, 22 the reference here? 23 A. I said that I have no comfort talking about the 24 legal aspects of the Ganz patent. 25 Q. Let's turn to RX-1550, page 165, lines 2-9.
1334 1 Q. Would it be safe or practical to use these older 2 bipolar microneedling systems to cause full denaturation? 3 A. No. 4 Q. Why not? 5 A. Because of what we just said. We don't want the 6 burns and blisters. We don't want the scarring. We don't 7 want the downtime. And would like these procedures not to 8 be too terribly painful. 9 Q. So moving on to slide 36, what is your opinion as 10 to whether the '836 patent solved the problems we discussed 11 with prior RF microneedling systems? 12 A. So this is an article published by a bunch of 13 peers of mine, again, people I respect, who, again, talk 14 about the Na Effect in regard to Sylfirm X here, and they 15 talk about the device harnessing the Na Effect, which is 16 what really sets it apart from the pack and highlights why 17 it has become the leader it is. 18 Q. And you're referencing CX-2857C? 19 A. That's correct. 20 Q. So moving on to slide 37 and the conclusions 21 here, what conclusions did you make concerning the Ganz 22 reference? 23 A. Pretty clear-cut. Ganz is directed to 24 cauterizing and removing tissue. It is not directed to 25 these treatments that we're talking about that are claimed	1336 1 The question asked was -- 2 A. Your Honor, I'm not seeing any of these on my 3 monitor. 4 JUDGE MCNAMARA: That's a problem. I am able to 5 see -- Mr. Nester just pulled up part of your deposition 6 transcript. Is it coming up for you? 7 MR. NESTER: Why don't I read it, Your Honor. 8 JUDGE MCNAMARA: I think Dr. Goldberg had a 9 problem there with his laptop. 10 A. Okay. 11 JUDGE MCNAMARA: Dr. Goldberg, there was no 12 question and there was no identification of the document and 13 that it came from his deposition. I know it did. 14 But could you do that, Mr. Nester, just give the 15 reference? 16 MR. NESTER: I can. 17 Q. So this is RX-1550, page 165, lines 2-9 of 18 Dr. Goldberg's deposition, September 15, 2023. 19 The question, I'll read it: 20 Would you agree that the Ganz -- that Ganz 21 describes an RF microneedling device? 22 Then there is an objection from counsel. 23 And then the response, your answer is: 24 As I said, this is a patent application. I just 25 have no familiarity nor comfort evaluating this patent

OPEN/CLOSED SESSIONS

1337 1 application. 2 Did you get that question and give that answer in 3 your deposition? 4 A. Again, I thought it was related to legal issues. 5 Q. Is that a yes? 6 A. I gave that answer. 7 Q. Did you get that question and give that answer? 8 A. Yes and yes. 9 Q. And today throughout this investigation you're 10 not giving an opinion about the asserted patents or claims 11 as they relate to Ganz, Exhibit 329, which we just looked 12 at; is that correct? 13 A. Legal issues, yes. 14 Q. And if we could turn to paragraph 30 of RX-329. 15 Ganz discloses that the zones of coagulation created in the 16 tissue area surrounding each perforation also help to 17 revitalize and rejuvenate the skin, correct? 18 A. That's what the patent says. 19 Q. Let's turn to paragraph 29. And it discloses 20 that the device and method in Ganz allows perforations that 21 are so small that they cannot be seen with the naked eye, 22 correct? 23 A. That's what it says. 24 Q. And you agree that the purpose of Ganz -- of the 25 Ganz device is not for cautery?	1339 1 And then here's your answer: 2 My understanding of the word cautery, I use it 3 every single day -- it's a radiofrequency. It's extremely 4 superficial. The purpose is stopping bleeding. There is no 5 doubt that his patent, as it delivers energy into the skin, 6 is probably very -- there is probably very little bleeding. 7 That's not the purpose of it; it's not for cautery. 8 Did you get that question and give that answer? 9 A. As I said, it's for cutting into the skin and 10 then it cauterizes while doing it. Its primary purpose is 11 not for cautery. 12 Q. And you agree that Ganz describes a zone of 13 coagulation as being 10 to 50 microns, correct? 14 A. That's what it says. 15 Q. And Ganz also discloses in paragraph 10 that the 16 needles or the electrodes can have a spacing of 5 17 millimeters or less, right? 18 A. Yes. 19 Q. And if the needles are spaced apart by 500 20 microns but the zone of coagulation extends only 10 to -- 10 21 to 50 microns, the zones of coagulation in Ganz would not 22 overlap with each other, correct? 23 A. Yes. 24 Q. And you agree that Ganz, RX-329, nowhere 25 describes one zone of coagulation overlapping with another
1338 1 A. The purpose of Ganz' device is to cause 2 perforations that are cauterized. 3 Q. I'll ask it again. You agree that the purpose of 4 the Ganz device is not for cautery, correct? 5 A. No, I don't agree. 6 Q. Okay. Let's go to RX-1550 again, which is your 7 deposition, and we'll go to pages 192 to 193. And if we 8 could start at line 19 of 192. 9 So I'm going to read it for you starting at line 10 15 of page 192. 11 Question. So if he Ganz knew the word 12 cauterization and did not use that in connection with his 13 description of what's happening in the Ganz device, would 14 you agree that it's not cauterizing? 15 Objection. Mr. Airan, again, yes, it was. 16 Let me just start that over. 17 Question. So if he Ganz knew the word 18 cauterization and did not use that in connection with his 19 description of what's happening in the Ganz device, would 20 you agree that it's not cauterizing? 21 Objection. 22 Sorry. Is that the end of your question? 23 Answer, by the questioning attorney, yes, it was. 24 Mr. Hyde, objection, calls for speculation, incomplete 25 hypothetical.	1340 1 zone of coagulation; is that right? 2 A. Yes. 3 Q. Did you hear the question? 4 A. I said yes. 5 Q. Okay. Thank you. I didn't hear it. I didn't 6 hear the answer. Sorry. 7 And let's turn to perforation. Perforation is 8 synonymous with puncture in your view, correct? 9 A. Perforation is synonymous with cutting. 10 Q. Perforation is synonymous with puncture, correct? 11 A. No. 12 Q. Let's go to RX-1550, page 159, lines 8 through 13 10, please. 14 Question. Is perforation another name for 15 puncture? 16 Answer. Perforation is a break, yeah, puncture, 17 that's fine. They're synonyms. 18 Did you get that question and give that answer in 19 your deposition? 20 A. Single perforation is a break, that is what I 21 said, yes. 22 Q. So you got that question and gave that answer in 23 your deposition? 24 A. Yes. 25 Q. In Ganz, it is your opinion that perforation does

OPEN/CLOSED SESSIONS

1341 1 not necessarily mean ablation or thermal damage, correct? 2 A. Someone coughed. I didn't hear your question. 3 Please repeat it. 4 Q. Sure. In Ganz, it's your opinion that 5 perforation does not necessarily mean ablation or thermal 6 damage, right? 7 A. Yes. 8 Q. And you agree that all accused RF microneedling 9 devices make perforations when the RF microneedles are 10 inserted in the skin? 11 A. They make little nicks into the skin. 12 Q. They actually make perforations, though, right? 13 A. There are little nicks into the skin. 14 Q. You're shaking your head yes, but I just want to 15 make sure the record is clear. 16 Are you agreeing that, when the accused 17 microneedling devices, their needles are inserted into the 18 skin, they make perforations. 19 A. Ganz makes perforations that leads to a cut into 20 the skin. These devices make little nicks into the skin. 21 Q. All right. So let's go to RX-1550, pages -- page 22 194, line 19, to 195, line 3. 23 Question. Are these zones of coagulation around 24 the needles still -- do these zones -- strike that. 25 Let me start over.	1343 1 that right? 2 A. Yes. 3 Q. Can you just, so we have a clear record, can you 4 please explain your opinion on that? 5 A. I almost feel this is partly semantics. A 6 perforation and a nick gets to be size related. Enough 7 perforations and you have a cut into the skin, and that is 8 what Ganz is. 9 The perforations, that's what they want to call 10 them, the nicks, what these are from microneedling devices 11 are so small, they are not doing that. 12 MR. RAUH: I pass the witness. Thank you, Your 13 Honor. 14 JUDGE MCNAMARA: Thank you very much. 15 Any redirect? 16 MR. HYDE: Very brief redirect, Your Honor. 17 REDIRECT EXAMINATION 18 JUDGE MCNAMARA: I know who you are, but would 19 you identify yourself for the record? 20 MR. HYDE: Bradley Hyde, Your Honor, from 21 Serendia. 22 JUDGE MCNAMARA: Thank you. 23 Q. Dr. Goldberg, you testified that you don't have 24 any comfort or familiarity testifying about the Ganz 25 reference. What did you mean by that?
1342 1 So when the RF microneedles are inserted into the 2 skin in the accused products, there's perforations, correct? 3 Answer. Yes. 4 Did you get that question and give that answer in 5 your deposition? 6 A. I did. 7 MR. NESTER: No further questions, Your Honor. 8 JUDGE MCNAMARA: Thank you. 9 Mr. Rauh? 10 MR. RAUH: Aaron Rauh for the Staff, Your Honor. 11 Just a couple of questions. 12 EXAMINATION BY COUNSEL FOR ITC STAFF 13 BY MR. RAUH: 14 Q. Hi, Dr. Goldberg. How are you? I don't believe 15 I've examined you on cross in your first round of testimony, 16 and I, unfortunately, had to miss your deposition because of 17 double-tracking of other depositions, but it is nice to meet you 18 virtually. 19 You were just shown a portion of your deposition 20 transcript about perforations caused by the accused 21 products. Do you recall that? 22 A. Yes. 23 Q. And I believe in your direct testimony today you 24 explained why Ganz' perforations are different than the 25 types of perforations caused by the accused products; is	1344 1 A. Solely the legal issues. I'm not a patent 2 lawyer. 3 Q. Okay. I think Staff asked a couple questions on 4 this. I just want to make sure the record is clear. 5 Are the perforations caused by the Ganz technique 6 similar to the perforations caused by RF microneedling 7 system used today such as the products at issue? 8 A. They are not. 9 Q. Now counsel for Respondents asked you questions 10 about whether Ganz creates zones of coagulation around the 11 perforations. Do you remember that? 12 A. Yes. 13 Q. Does Ganz create coagulation around where the 14 needles were inserted? 15 A. No. 16 Q. Why not? 17 A. Because there can't be coagulation around where 18 the needles are inserted when the tissue has been destroyed. 19 It's gone. 20 Q. Counsel for Respondent also asked you questions 21 about whether Ganz discloses zones of coagulation that fully 22 extend between the needles. Do you remember that? 23 A. Yes. 24 Q. Is it actually possible for you to tell from 25 Ganz, from the Ganz figures, how far the coagulation is