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Transcript of Dr. David J. Goldberg

Date: April 18, 2025

Case: EndyMed Medical Ltd., et al. -v- Serendia, LLC (PTAB)

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EndyMed v. Serendia
IPR2024-00386

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 ENDYMED MEDICAL LTD. and ENDYMED MEDICAL LTD.,

6 Petitioner,

7 v.

8 SERENDIA, LLC,

9 Patent Owner.

10
11 Case IPR2024-00386

12 U.S. Patent No. 9,480,836

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14
15
16 Deposition of DR. DAVID J. GOLDBERG

17 Conducted virtually via Zoom

18 Friday, April 18, 2025, 8:54 a.m. CST

19 Job No.: 576982

20 Pages: 1 - 137

21 Reported by: THERESA A. VORKAPIC,

22 CSR, RMR, CRR, RPR

1 Deposition of Dr. David J. Goldberg,
2 conducted virtually via Zoom, pursuant to notice
3 before Theresa A. Vorkapic, a Certified Shorthand
4 Reporter, Registered Merit Reporter, Certified
5 Realtime Reporter, Registered Professional
6 Reporter and a Notary Public in and for the State
7 of Illinois.

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A P P E A R A N C E S

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14	Acne Scars Effective,		
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16	Downtime Treatment with a		
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19	Radiofrequency Technology		
20			
21			
22			

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

2 THE REPORTER: Would you raise your right
3 hand, please.

4 (The witness was duly sworn.)

5 DR. DAVID J. GOLDBERG,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. AUTERI:

10 Q Hi, Dr. Goldberg. You understand this is
11 a deposition for the inter parties review for US
12 Patent No. 9,480,836?

13 A Yes.

14 Q Is there any reason that you cannot
15 testify truthfully today?

16 A No.

17 Q Where are you located today?

18 A New York City.

19 Q Is there anyone else there with you?

20 A No.

21 Q Other than via Zoom, are you communicating
22 with anyone in the room or remotely or any other

1 way?

2 A No.

3 Q Just to be clear, when I say "David," I'm
4 talking to the technician. I'll use Dr. Goldberg.
5 Even if there was -- I'll be calling you
6 Dr. Goldberg. But I want to make sure you don't
7 get all confused.

8 MR. AUTERI: David, can we mark our first
9 exhibit. Let's do the document with the title
10 name Public EX.2142-Goldberg declaration ISO PL
11 response and make that Goldberg Deposition
12 Exhibit 1.

13 (A certain document was marked Goldberg
14 Deposition Exhibit 1 for identification,
15 as of 04/18/2025.)

16 BY MR. AUTERI:

17 Q Dr. Goldberg, if you happen to have a
18 printed copy of your declaration, the one that's
19 Exhibit 2142, you can look at that one or you can
20 download the exhibit that's about to be marked,
21 whatever is your preference.

22 A I have 2142 in front of me here.

1 Q Okay. So if you prefer to use your paper
2 copy, that's perfectly fine with me.

3 MR. AUTERI: David, is there a way to put
4 that in the chat so we can download it also?

5 AV TECH MIELCAREK: I'll put it in the
6 chat in just a moment.

7 MR. AUTERI: Thank you. For housekeeping
8 purposes, what we are marking as Goldberg
9 Deposition Exhibit 1 is Exhibit 2142 from IPR
10 No. 2024-00386 that is it titled: Declaration of
11 David J. Goldberg in Support of Patent Owner's
12 Response.

13 BY MR. AUTERI:

14 Q Dr. Goldberg, can you look at Paragraph 16
15 of your declaration? It should be on Page 8.

16 A Yes.

17 Q In Paragraph 16 you state: "With respect
18 to how the RF energy is delivered, RF energy can
19 be emitted into the skin via a monopolar mode that
20 utilizes an active electrode and a grounded
21 electrode or via a bipolar mode that employs two
22 active electrodes."

1 Then you state: "In monopolar modes an
2 electrical circuit formed by an electron current
3 that flows from the active electrode to the
4 grounded electrode is generated in the patient's
5 body."

6 My question is from monopolar devices, is
7 the grounded electrode external to the body?

8 A No.

9 Q Is it referred to as a remote ground?

10 A It's in contact with a patient's skin
11 somewhere else on their body.

12 Q Is it in contact to the external surface
13 of the skin?

14 A Can you clarify what you mean by "the
15 external surface of the skin"?

16 Q So let's back up. Maybe a better question
17 is the grounded electrode in a monopolar device
18 would not be inserted into the body; is that
19 correct?

20 A That's correct.

21 MR. SANDERS: Objection.

22 BY MR. AUTERI:

1 Q It would be placed on the surface of the
2 skin; is that correct?

3 MR. SANDERS: Objection. Vague.

4 BY THE WITNESS:

5 A The monopolar receiving electrode is
6 placed on the surface of the skin with a pad.

7 BY MR. AUTERI:

8 Q Is it correct to say that bipolar devices
9 did not use such a ground?

10 A Bipolar devices do not need that kind of
11 ground.

12 Q If we could go forward to Paragraph 70 of
13 your declaration. It should be Page 37 I believe.

14 A Yes.

15 Q In Paragraph 70, you state that: "Based
16 on my experience, prior art monopolar devices had
17 several known drawbacks that were solved by the
18 '836 patent."

19 And in the next sentence you state: "In
20 particular, it was known that monopolar
21 configurations result in a heated region developed
22 below the electrode that damages a relatively

1 large volume of the dermis and epidermal band,
2 which is minimized by the active cooling of the
3 surface electrode during treatment."

4 Do you see that?

5 A Yes.

6 Q And then you cite to Exhibit 2049? Is
7 that correct?

8 A Yes.

9 Q And that is US Patent 9,510,899 to
10 Manstein?

11 A Yes.

12 Q You specifically cite to Column 3, lines
13 31 to 56 of Exhibit 2049; is that correct?

14 A Yes.

15 MR. AUTERI: David, I'd like to mark the
16 second exhibit. It'll be the document with the
17 file name EX.2049-Manstein '899.

18 AV TECH MIELCAREK: Stand by, Counsel.

19 (A certain document was marked
20 Goldstein Deposition Exhibit 2 for
21 identification, as of 04/18/2025.)

22 BY MR. AUTERI:

1 Q For housekeeping purposes, the document
2 we're marking as Goldberg Deposition Exhibit 2 is
3 Exhibit 2049 from IPR No. 2024-00386. It is the
4 US Patent No. 9,510,899 to Manstein.

5 So, Dr. Goldberg, can you flip to Column 3
6 and look at the paragraph that starts on line 31?

7 A Can you enlarge this? It's not very big.
8 I can't see it.

9 MR. AUTERI: Yes. David, if Dr. Goldberg
10 prefers --

11 THE WITNESS: There we go.

12 BY MR. AUTERI:

13 Q We can go to it on the screen. Can we go
14 to Column 3, the paragraph starting on line 31.

15 AV TECH MIELCAREK: Doctor, would you like
16 to have control of the screen so you can navigate
17 it yourself?

18 BY MR. AUTERI:

19 Q Dr. Goldberg, it's up to you. In the chat
20 there is Goldberg 02 that you can download.

21 A I'd rather have control of the screen
22 where I can see what I'm supposed to be looking

1 at.

2 Q You would like control, right?

3 A Yes.

4 Q If you go to chat --

5 A It looks like I can control it at this
6 point. So tell me where Column 3 is.

7 Q Okay. So if you scroll down, it should be
8 Page 9 I think.

9 Do you see the paragraph that starts on
10 line 31, it starts with: "Another approach to
11 skin tightening"..?

12 A Yes.

13 Q Column 3 the sentence that starts on line
14 31 states: "Another approach to skin tightening
15 and wrinkle removal involves the application of
16 radio frequency RF electrical current to the
17 dermal tissue via a cooled electrode at the
18 surface of the skin."

19 If this is talking about a single cooled
20 electrode, does that mean the device being
21 discussed here is a monopolar device?

22 A Within the context of your question

1 looking at that single sentence, I'm not sure I
2 can answer the question.

3 Q If we scroll down to -- the next sentence
4 says: "Application of RF current in this
5 noninvasive manner results in a heated region
6 developed below the electrode that damages a
7 relatively large volume of the dermis. The
8 epidermal damage is minimized by the active
9 cooling of the surface electrode during
10 treatment."

11 So my question is if the device used a
12 singled cooled electrode -- sorry. Back up.
13 Strike that question.

14 If the device used a single cooled
15 electrode at the surface and the RF current was
16 applied noninvasively, does that mean the device's
17 electrode is not inserted into the skin?

18 A I'm not sure I understand the question.

19 Q If the electrode is located at the surface
20 and the RF current applied by this electrode was
21 applied noninvasively, does that mean the
22 electrode was not inserted into the person's body?

1 A If the electrode is placed on the skin and
2 needles do not penetrate into the skin, then the
3 electrode was not placed within the body.

4 Q And then prior art RF bipolar
5 microneedling devices used electrodes that were
6 inserted into the body; is that correct?

7 A Say the question again, please.

8 Q So prior art RF bipolar microneedling
9 devices used electrodes that were inserted into
10 the body; is that correct?

11 A So this Manstein patent is 2015. The Na
12 patent if I remember correctly is 2011 and the Na
13 patent places electrodes within the body.

14 Q And prior to the Na patent, there were RF
15 bipolar microneedling devices, correct?

16 A Correct.

17 Q And the prior art bipolar microneedling
18 devices placed the electrodes into the skin?

19 A Well, you can go all the way back to
20 Clarey, (phonetic) which is a hundred years ago,
21 that's a radiofrequency device that is placed
22 within the skin to burn the skin.

1 (Reporter clarification).

2 I said prior radiofrequency devices,
3 because that's the broad category he's referring
4 to, go back a hundred years ago and they were
5 placed within the skin to burn the skin, to
6 cauterize to stop bleeding.

7 Q Column 3, lines 31 to 38 is not discussing
8 RF bipolar microneedle devices?

9 A If it's referring to radiofrequency
10 current that is on top of the skin and not
11 penetrating into the skin, that's not technically
12 a penetrating RF microneedling device.

13 Q That would mean this is not is discussing
14 bipolar microneedling device; is that correct?

15 A I think I answered the question.

16 Q I just want to confirm for the record, is
17 that a yes?

18 A Repeat the question again, please.

19 Q Is it correct that Column 3, lines 31
20 through 38, is not discussing RF bipolar
21 microneedling devices?

22 A As I said before, if that paragraph is

1 referring to radiofrequency devices placed on top
2 of the skin when the needles do not penetrate into
3 the skin, then by definition it is not a
4 radiofrequency bipolar microneedling device.

5 Q If we look at the sentence starting on
6 Line 38, it says: "This treatment approach can be
7 painful and can lead to short-term swelling of the
8 treated area. Also because of the relatively
9 large volume of tissue treated underneath the
10 balance application of RF current with surface
11 cooling, this RF tissue remodeling approach does
12 not permit fine control of damage patterns and
13 subsequent skin tightening."

14 My question -- if you read one more
15 sentence in, this confirms this paragraph's
16 discussing monopolar applications; is that
17 correct?

18 A Line 44 starts: "If this type of
19 radiofrequency is monopolar..."

20 Q Right. So does that mean everything
21 preceding that in this paragraph was discussing
22 monopolar devices?

1 A Again, this is Dieter Manstein's patent.
2 I don't know what was in his mind. Seeing that if
3 Line 44 is referring to monopolar and referring to
4 what's above, then that's correct.

5 Q Is it correct to say that the treatment
6 approach being discussed here is specifically
7 noninvasive RF treatments?

8 A As a practicing physician, I'm not sure
9 what you mean by noninvasive. Invasive means to
10 me that something is going on in the skin.
11 Noninvasive here is that the needles don't
12 penetrate the skin.

13 Q Maybe I could word this better.

14 Is it correct to say that the treatment
15 approach being discussed here is discussing the
16 use of noninvasive electrodes?

17 A As I said before, the treatment discussed
18 here is using an electrode that doesn't break into
19 the skin, doesn't create holes in the skin through
20 microneedling.

21 Q So do you agree that the problems with
22 developing a heated region below the electrode

1 that damages a relatively large volume of the
2 dermis is a problem that resulted from using
3 noninvasive monopolar RF treatments?

4 A The problem with the nonselective approach
5 is related to the use of monopolar devices.

6 Q So this wasn't a drawback of prior art
7 bipolar RF microneedling devices?

8 A I don't understand your question.

9 Q The problem being discussed here was a
10 problem with noninvasive monopolar devices,
11 correct?

12 A The problem being discussed here relates
13 to monopolar devices.

14 Q So this wasn't a drawback of prior art
15 bipolar RF microneedling devices, correct?

16 A This is a problem with monopolar devices.

17 Q So for prior art bipolar RF microneedling
18 devices, there was no need to balance application
19 of RF current with the a surface cooling; is that
20 correct?

21 MR. SANDERS: Objection. Vague.

22 BY THE WITNESS:

1 A Please rephrase the question so I can
2 understand it better.

3 BY MR. AUTERI:

4 Q I can maybe start back a little bit.

5 Did prior art bipolar RF microneedling
6 devices use surface cooling?

7 A Prior art microneedling devices did not
8 use surface cooling.

9 Q If we look at the sentence that starts on
10 Column 3, Line 44, it says: "This type of RF
11 technique is monopolar and relying on a remote
12 grounding of the patient to complete a current
13 flow from a single electrode."

14 And I believe we discussed this already,
15 but prior art bipolar RF microneedling devices did
16 not rely on a remote ground?

17 A Monopolar RF devices rely on a distant
18 electrode somewhere else on the body. Bipolar
19 devices do not.

20 Q If would look at the sentence starting 47,
21 it says: "The current on the monopolar
22 applications must flow through the patient's body

1 through the remote ground which can lead to
2 unwanted electrical stimulation of other parts of
3 the body."

4 My question is is one example of that
5 having the current flow through the heart on its
6 way from the active electrode to the remote
7 electrode?

8 A That refers to the fact that if people
9 have other electrical devices in their body,
10 pacemaker is a good example, the energy may go to
11 the pacemaker.

12 Q That wouldn't have been a problem for
13 prior art bipolar microneedling devices; is that
14 correct?

15 A The electrodes in bipolar devices are not
16 elsewhere on the body.

17 Q So prior art bipolar devices would not
18 have led to unwanted electrical stimulation of
19 other parts of the body?

20 A Prior art bipolar radiofrequency devices
21 if not kept anywhere near these electrical devices
22 will have no impact on them.

1 Q Can we go back to what we marked as
2 Goldberg Deposition Exhibit 1, which was your
3 declaration, and feel free to use the paper copy,
4 but let's look at Paragraph 46.

5 A And also I should state if you need a
6 break at any time, just let me know.

7 A We're just getting started. Come on.

8 Q Yes, that's what I figured. Once I get
9 rolling I just don't want to -- feel free to --

10 A I've lost control of this. I think you
11 took control of the exhibit again. So if you want
12 me to look at paragraphs, you're going to have to
13 get me there.

14 Q We could do that or if you prefer your
15 paper copy.

16 A I like doing it myself so tell me where
17 you want me to go.

18 Q So let's go to it's Page 26 at the bottom
19 that I believe we're looking at a PDF copy.

20 A Okay. Go ahead.

21 Q In Paragraph 46 of your declaration, you
22 state: "The Sylfirm X's marketing material

1 explains the benefits of the patented inventions
2 and links the benefits of using the Sylfirm X
3 product to the inventions claimed in the 836
4 Patent." And cites the 836 patent specifically.

5 My question is in Paragraph 46 you cite to
6 Exhibit 2037 of your declaration, correct?

7 A Yes.

8 Q You refer to that as the Sylfirm X
9 brochure?

10 A I don't have Exhibit 2037 in front of me
11 right now, but that's what the paragraph says,
12 yes.

13 Q Let's mark that exhibit.

14 MR. AUTERI: So David, that's going to be
15 the file that has the name EX.2037-Sylfirm X
16 brochure, and we're going to make that Goldberg
17 deposition Exhibit 3.

18 (A certain document was marked Goldberg
19 Deposition Exhibit 3 for identification,
20 as of 04/18/2025.)

21 AV TECH MIELCAREK: I'm sorry. Can you
22 give me the name of the file again?

1 MR. AUTERI: EX.2037-Sylfirm X brochure.

2 AV TECH MIELCAREK: I see it. Just a
3 moment, please.

4 MR. AUTERI: When it's ready, let's go
5 ahead and give Dr. Goldberg control of this
6 again.

7 AV TECH MIELCAREK: Doctor, you should be
8 able to control the screen again.

9 BY MR. AUTERI:

10 Q For housekeeping, I just want to state
11 that the exhibit we just marked as Goldberg
12 Deposition Exhibit 3 is Exhibit 2037 from IPR
13 2024-00386.

14 Dr. Goldberg, if you look at the top of
15 the first page the very first thing you see under
16 Sylfirm X is dual wave RF microneedling system?

17 A That's correct.

18 Q If we go to the second page, there are
19 some images at the top right under Sylfirm X
20 Ultimated Edition, we have one that says minimally
21 invasive under it, another one that has a clock
22 and short treatment time, it also has a minimal

1 downtime, safe and comfortable, immediate results,
2 these are -- Dr. Goldberg, my question is these
3 are a listing of some benefits the patent owner
4 purports the Sylfirm X has; is that correct?

5 A That's what marketing material states.

6 Q Right under that description of some
7 advantages there is a title that says dual wave RF
8 microneedling system.

9 Do you see that?

10 A I do.

11 Q And the Sylfirm X is a dual wave
12 microneedling system; is that correct?

13 A That is correct.

14 Q Is it correct that this brochure is
15 attributing these purported benefits to the
16 SylfirmX's dual wave technology?

17 A Please ask the question again.

18 Q Is it correct to assume that the benefits
19 listed above are being attributed at least in part
20 to the Sylfirm X's dual wave RF microneedling
21 technology?

22 MR. SANDERS: Objection. Ambiguous.

1 BY THE WITNESS:

2 A Once again, I don't understand the
3 question.

4 BY MR. AUTERI:

5 Q So toward the top of the Page 2 of
6 Exhibit 2037, you agree there is a listing of
7 maybe five potential benefits of using the
8 Sylfirm X?

9 A That is correct.

10 Q And under the benefits, they list dual
11 wave RF microneedling system, another thing is
12 bipolar non-insulated electrode system and under
13 that is 300-micrometer treatment?

14 A Those are three of the characteristics of
15 this technology.

16 Q Is it correct to assume by listing some
17 purported advantages of using the Sylfirm X that
18 at the top of the page before listing these
19 different attributes in Sylfirm X -- strike that
20 question.

21 Do you believe this page is at least
22 attributing some of these benefits to the dual

1 wave RF microneedling technology in Sylfirm X?

2 MR. SANDERS: Objection. Ambiguous.

3 BY THE WITNESS:

4 A The five attributes at the top are
5 marketing aspects, that is correct, and the three
6 categories below describe this device.

7 BY MR. AUTERI:

8 Q Would it be correct be to assume that
9 these -- this description of how the devices work
10 is what they're attributing to giving the benefits
11 that they list at the top of the page?

12 MR. SANDERS: Objection --

13 BY THE WITNESS:

14 A You'd have to ask market -- sorry. You'd
15 have to ask marketing people that question.

16 BY MR. AUTERI:

17 Q Next to dual wave RF microneedling system,
18 it says: "Pulsed wave (PW) and continuous wave
19 (CW) ."

20 My question is when the Sylfirm X brochure
21 refers to dual wave, that's referring to the
22 Sylfirm X's ability to operate in both pulsed wave

1 and continuous wave modes?

2 A That is correct.

3 Q And then underneath pulsed wave (PW) and
4 continuous wave (CW), it says: "The world's first
5 and only FDA-registered pulsed wave (PW) and
6 continuous wave (CW) radiofrequency microneedling
7 device featuring 300-micron depth for targeting
8 both skin laxity and pigmentation for ultimate
9 skin rejuvenation."

10 Then it says: "Sylfirm X with it's eight
11 different PW/WC modes has proven its effectiveness
12 and safety through 25-plus clinical studies and
13 experiments."

14 My question to you, Dr. Goldberg, is do
15 you agree this page of Exhibit 2037 is touting
16 the benefits of the Sylfirm X's dual wave
17 technology?

18 A This is a marketing brochure that is
19 touting the benefits of the Sylfirm X as a
20 device.

21 Q And it's bragging that the Sylfirm X is
22 the first and only FDA-registered pulsed wave and

1 continuous wave device, correct?

2 MR. SANDERS: Object to the
3 characterization.

4 BY THE WITNESS:

5 A I read it as it's stating what its
6 benefits are and it is a device that has dual and
7 continuous wave. They state that it was the first
8 to have that. That, frankly, that I don't know,
9 but it's the only one that I have that has both
10 pulsed wave and continuous wave.

11 BY MR. AUTERI:

12 Q And the Sylfirm X brochure it's touting
13 the benefits of the Sylfirm X having eight
14 different pulsed wave and continuous wave modes,
15 correct?

16 A It states that it has those
17 characteristics.

18 Q And those characteristics and been proven
19 for its effectiveness and safety; is that correct?

20 A Certainly with clinical use, I can verify
21 that is correct.

22 Q Can we go to Page 6 of the brochure, and

1 on this page, Exhibit 2037 is discussing the
2 Sylfirm X's pulsed wave mode; is that correct?

3 A That is correct.

4 Q And on this page the brochure explains the
5 Sylfirm X's pulsed wave mode produces multiple
6 pulses?

7 (Discussion was had off the record.)

8 BY MR. AUTERI:

9 Q If you scroll down a little bit, do you
10 see multiple short pulses? Up a little bit more.

11 A I'm not sure what you want me to look at
12 here.

13 AV TECH MIELCAREK: Counsel, would you
14 like control?

15 MR. AUTERI: Yes, if that's possible.

16 AV TECH MIELCAREK: All right. You should
17 be able to do it now.

18 BY MR. AUTERI:

19 Q On Page 6, do you see the brochure
20 explains the Sylfirm X's pulsed wave mode produces
21 multiple sort pulses?

22 A Yes.

1 Q And if we scroll down a little bit, there
2 are four pulsed wave modes, PW1 through PW4; is
3 that correct?

4 A That is correct.

5 Q They have different pulse durations?

6 A Yes.

7 Q And they have -- different pulse modes are
8 used for different applications; is that correct?

9 A Yes.

10 Q And from the applications listed here, are
11 those different applications different skin
12 problems?

13 A Well, melasma and redness, melasma and
14 redness are the same problems and telangiectasia
15 is also redness, blood vessels, and acne is acne.

16 Q The first one is for treating melasma and
17 sensitive diffuse redness, correct?

18 A Yes.

19 Q And the fourth one PW mode treats acne
20 vulgaris?

21 A Yes.

22 Q If we go to Page 8, this has the word

1 indications at the top?

2 A Yes.

3 Q And then it says PW mode. And then it
4 starts listing things like pigmented lesions,
5 vascular lesions, acne and then they have some sub
6 information underneath them.

7 My question to you is what is an
8 indication? I'm not sure -- I'm familiar with the
9 term, and I'm assuming it's a skin issue, but I
10 would like to confirm with you if that's a term
11 you're familiar with and what it means?

12 A You want to know what the meaning of
13 indication is?

14 Q Is it a special term of art in dermatology
15 is I guess my first question?

16 A The indication is what is the device in
17 this mode indicated for. Is it indicated for
18 acne? Is it indicated for melasma?

19 Q Does that mean indicated means it treats
20 whatever it indicates?

21 A Indicated simply means it can be used for
22 the treatment of.

1 Q I just wanted to make sure I understood
2 the term.

3 So Page 8 discusses different indications
4 that the pulsed wave mode can be used to treat,
5 correct?

6 A Yes.

7 Q And do you agree that the Sylfirm X's dual
8 wave technology including its pulsed wave modes
9 allows for customized treatment?

10 A Yes.

11 Q Does that allow you to treat more skin
12 issues?

13 A More skin issues than what?

14 Q Sorry. Does the Sylfirm X's dual wave
15 technology allow the Sylfirm X to treat more skin
16 issues than a device that only operated in
17 continuous wave?

18 A The continuous versus pulsed wave mode
19 allows it to treat different indications and
20 different depths.

21 Q So the Sylfirm X's dual wave technology
22 gives you an ability to customize your treatment;

1 is that correct?

2 A If customized means that that continuous
3 wave and pulsed wave gives me more options, then
4 that is correct.

5 Q Would having more options be a deciding
6 factor in purchasing decisions for RF
7 microneedling devices?

8 MR. SANDERS: Objection. Speculation.

9 BY THE WITNESS:

10 A There are many deciding factors.

11 BY MR. AUTERI:

12 Q And is the ability to provide customized
13 treatment a deciding factor?

14 A A deciding factor in what?

15 Q In purchasing an RF microneedling device?

16 A As I said, there are many factors.

17 Q Okay. Is this one of the factors?

18 A It's not the most important factor, but it
19 is a factor.

20 Q So you're saying being able to treat more
21 types of skin issues is not an important decision
22 factor in purchasing RF microneedling devices?

1 MR. SANDERS: Objection.

2 Mischaracterizes.

3 BY THE WITNESS:

4 A That's not what I said.

5 BY MR. AUTERI:

6 Q Do you agree that with the Sylfirm X, one
7 of the reasons people buy the Sylfirm X is its
8 ability to operate in both continuous wave and
9 pulsed wave modes?

10 A It's one of the many factors.

11 Q Let's go back to what we marked as
12 Goldberg Deposition Exhibit 1. This is your
13 declaration. And, again, if you prefer to follow
14 on your paper copy, you can, but let's go to
15 Paragraph 47.

16 A Did you say Paragraph 47?

17 Q Yes.

18 AV TECH MIELCAREK: I'm going to switch to
19 that tab in the window, Counsel, and you can still
20 control the screen.

21 MR. AUTERI: Okay. Perfect.

22 AV TECH MIELCAREK: There you go.

1 BY MR. AUTERI:

2 Q If we look at Paragraph 47 of your
3 declaration, at the end of that paragraph you cite
4 to Exhibit 2039; is that correct?

5 A Yes.

6 MR. AUTERI: So I'd like to mark as
7 Goldberg Deposition Exhibit 4 the document that
8 has a title name EX.2039-Sylfirm X video.

9 (A certain document was marked Goldberg
10 Deposition Exhibit 4 for identification,
11 as of 04/18/2025.)

12 AV TECH MIELCAREK: Which file exactly,
13 I'm sorry, Counsel?

14 MR. AUTERI: EX.2039-Sylfirm X video.

15 AV TECH MIELCAREK: I'm going to share it
16 with sound.

17 MR. AUTERI: Let's play for Dr. Goldberg
18 let's play it from the beginning and go until a
19 minute 58.

20 For housekeeping purposes, to reference
21 what we have marked as Goldberg Deposition
22 Exhibit 4 is Exhibit 2039 from IPR 2024-00386.

1 Please play the video.

2 (Video played).

3 BY MR. AUTERI:

4 Q So we were just watching Exhibit 2039, and
5 the video mentions the Sylfirm X's dual wave
6 technology quite a bit; is that correct?

7 A It is quite a bit, yes.

8 Q And let's go back to about a minute 37
9 mark. And one of the benefits to the Sylfirm X's
10 PW mode is it allows for selective thermal effect;
11 is that correct?

12 A That's correct.

13 Q And if we can go back to -- let's play
14 from a minute 48 to a minute 58.

15 (Video played).

16 Q So Exhibit 2039 touts the benefit of the
17 Sylfirm X's PW mode for addressing diffused
18 redness, small blood vessels as well as
19 superficial pigmentation; is that correct?

20 A That's correct.

21 Q And this video also says the Sylfirm X is
22 the only device with both pulsed wave modes and

1 continuous wave modes; is that correct?

2 A That's correct.

3 Q If we continue to watch from the minute 34
4 mark, let's play all the way to the two-minute one
5 second mark. Actually let's start from two-minute
6 30 second mark and play to the two-minute 48.

7 (Video played)

8 Q Exhibit 2039 said that the Sylfirm X has
9 eight different set modes do you agree that the
10 video touts the benefits of being able to treat
11 various skin concerns for all ages and skin types
12 due to the Sylfirm X's eight different dual wave
13 modes?

14 MR. SANDERS: Objection. Vague.

15 BY THE WITNESS:

16 A This is marketing material, okay.
17 Marketing material is always vague. I get the
18 sense that you're stating that the reason that one
19 would purchase this device is because it has
20 pulsed wave and continuous wave modes, and I said
21 before there are other, frankly, more important
22 factors than this.

1 BY MR. AUTERI:

2 Q But the marketing material is making a big
3 deal of this; is that correct?

4 A This marketing material discusses the
5 pulsed wave and continuous wave. But as I said,
6 that's a nice thing but that's not what made me
7 buy this device.

8 Q So are you saying that being able to treat
9 various concerns for all ages and skin types is
10 not a major -- sorry, strike that question.

11 You said that's not what made me buy this
12 device. You were referring to the ability for the
13 Sylfirm X to operate in both pulsed wave and
14 continuous wave mode?

15 A What I said was -- you keep pushing me on
16 the fact that this marketing material discusses
17 pulsed wave and continuous wave, and it does, and
18 you seem to be suggesting that that is the reason
19 that I bought the device. As I said, that is a
20 nice factor. It's not the reason I bought the
21 device.

22 Q But talking more generally in the

1 industry, you would agree with some operators
2 being able to treat various skin concerns for all
3 ages and skin types is an important point in
4 making a decision whether you're buying that RF
5 microneedling; is that correct?

6 MR. SANDERS: Objection. Vague.

7 BY THE WITNESS:

8 A The most important factor is safety and
9 that's -- anybody that would buy the device,
10 safety is first, the ability to treat on or off
11 the face is second, and all these other things are
12 nice add-ons.

13 BY MR. AUTERI:

14 Q If you have two devices, both can operate
15 safely, both can operate on the face, the only
16 difference is one can only operate in continuous
17 wave mode and the other one can operate in both
18 continuous and dual wave mode, would the absence
19 of the pulsed wave mode in one of those devices be
20 an important part in deciding between the two?

21 A So there's so many other factors, it's the
22 price of the device, it's the availability of

1 servicing. We have multiple devices and we don't
2 have just Sylfirm X, and the continuous pulsed
3 wave mode, frankly, was a nice factor. It did not
4 play a major role in our decision to buy this
5 device.

6 Q In your declaration, you didn't analyze
7 the price of the Sylfirm X versus other devices?

8 A The declaration did not ask me to analyze
9 the price of the devices.

10 Q And same with availability of servicing?

11 A No, those are important factors of
12 purchasing. I was discussing patent with had
13 nothing to do with either one of those.

14 Q So there's important aspects of the
15 Sylfirm X that had nothing to do with the patent
16 in terms of -- strike that question.

17 In terms of deciding whether to buy the
18 Sylfirm X, are you saying that there are other
19 factors that had nothing to do with the patent
20 that are important to deciding to buy the
21 Sylfirm X?

22 A I'm going to say it again.

1 The most important factors are the safety
2 which really is the Na principle, the ability to
3 treat at various depths. Those are the two most
4 important factors. The other factors are all
5 nice, but that's not what the starting point is.

6 Q Going back to your declaration, that is
7 what we marked as Goldberg Exhibit 1, and let's go
8 to Paragraph 48.

9 AV TECH MIELCAREK: One moment, please.
10 BY MR. AUTERI:

11 Q So if we look at Paragraph 48, you cite to
12 an Exhibit 2101; is that correct?

13 A Yes.

14 MR. AUTERI: So I would like to make that
15 our next exhibit. So let me just double check. I
16 think this is going to be Goldberg Deposition
17 Exhibit 5. And what I want to mark has a file
18 name EX.2101-Sylfirm X press release.

19 David, let me know if you have trouble
20 finding that.

21 AV TECH MIELCAREK: I see it. Just a
22 moment. It will be on the screen.

1 (A certain document was marked Goldberg
2 Deposition Exhibit 5 for identification,
3 as of 04/18/2025.)

4 BY MR. AUTERI:

5 Q For housekeeping purposes, what we are
6 marking Goldberg Exhibit 5 is Exhibit 2101 from
7 IPR 2024-00386.

8 Do you see there is an image to the
9 Sylfirm X to the right of the page? A little
10 bigger.

11 Dr. Goldberg, do you see the image that
12 has a Sylfirm X and what looks like the console?

13 A Yes.

14 Q Right under Sylfirm X it says: Emerging
15 dual wave RF microneedling system, correct?

16 A Yes.

17 Q Scroll down a little more.

18 Again, Exhibit 2101 is saying that the
19 world's first and only FDA-registered pulsed wave
20 and continuous wave radiofrequency device?

21 So my question to you is that this is
22 saying the Sylfirm X is the world's first and only

1 FDA-registered pulsed wave and continuous wave
2 radiofrequency device, correct?

3 A That is what it says.

4 Q And so far all the marketing material we
5 looked at from the Sylfirm X prominently displays
6 that the Sylfirm X is allegedly the first and only
7 dual wave --

8 A Its marketing materials display lots of
9 things. They're focusing on the pulsed wave and
10 continuous wave as part of that marketing
11 material.

12 Q If they put the fact that the Sylfirm X is
13 allegedly the first and only dual wave
14 microneedling device on the first page and that's
15 the first thing you read, don't you think this
16 company thinks that the dual wave technology is
17 pretty important?

18 A So this company markets their device,
19 follows the Na principle, which is what makes it
20 safe, it follows the principle and patents of
21 being able to penetrate to various depths and it
22 also markets that it has continuous wave and

1 pulsed wave.

2 As you're scrolling through the marketing
3 material, you notice they also discuss other
4 things such as their exosomes. They are not just
5 marking the pulsed wave and continuous wave. This
6 is the marketing brochure. You can't focus on
7 just one aspect of it.

8 Q What is the exosome?

9 A Exosomes are topically applied products to
10 the skin that aid in the results of radiofrequency
11 microneedling and help healing.

12 Q Are exosomes something that's used in
13 conjunction with the Sylfirm X?

14 A They can be used in conjunction. They can
15 be used by themselves. Think of this as the next
16 line of skincare products.

17 Q After they discuss the exosomes, this
18 brochure says: "In 2021 the brand brings the
19 first and only FDA-registered dual wave RF
20 microneedling system featuring both PW, pulsed
21 wave, and CW, continuous wave modes, with new
22 300-micron depth Sylfirm X Ultimate Edition."

1 So, again, this press release advertises
2 that the Sylfirm X is the first and only
3 FDA-registered dual wave microneedling device
4 having both PW and CW modes, correct?

5 A You've now asked the same question
6 multiple times and I'll keep answering it the same
7 way.

8 This marketing material focuses on at
9 least so far what you've shown me both exosomes
10 and the Sylfirm X and it's dual wave capacity.

11 Q We'll go to the next page. Is this big
12 enough for you to see, Dr. Goldberg? I'm not
13 sure --

14 A Yes.

15 Q So if we look the third paragraph down,
16 the one that starts with Sylfirm X Ultimate
17 Edition, this sentence says: "Sylfirm X ultimate
18 decision manufactured by Viol Co., Ltd:
19 (Gyeonggi-do, South Korea) and distributed in the
20 US by BEN EV Company, boasts eight different
21 continuous and pulsed wave bipolar RF delivery
22 nodes. It uses bipolar non-insulated

1 microneedling RF electrodes to uniformly treat the
2 entire skin layer maximizing treatment results and
3 providing global skin improvements specifically
4 redness and vascularity with PW modes and skin
5 laxity with CW modes."

6 So my question is do you agree that
7 Exhibit 2101 touts that the Sylfirm X pulsed wave
8 mode is specifically good at treating redness and
9 vascularity?

10 A Yes, it does.

11 Q If we go to Page 3, scroll down to, it's
12 the fourth full paragraph, Dr. Goldberg, do you
13 see the paragraph that starts with: The ability
14 to tailor treatments...

15 A Yes.

16 Q So that paragraph says: "The ability to
17 tailor treatments based on what the patient wants
18 and what their skin needs, using just one device
19 is the definition of advancement in the
20 regenerative space. With this device, I target
21 skin pigmentation as well as aging on the face and
22 body. The technology pulsed wave and continuous

1 wave delivery options plus pain-free treatment at
2 the optimal depth of 300 microns is all I need in
3 a device, Dr. Goldfarb expressed."

4 Is it correct Dr. Goldfarb thinks the
5 Sylfirm X's ability to operate in both pulsed wave
6 and continuous wave modes is important?

7 A That's what Richard Goldfarb says, yes. I
8 know him well.

9 Q Let's look at the last sentence of that
10 paragraph. I think this is a Dr. Duncan says
11 this: "Patients report feeling no pain and love
12 the fact that their treatments do not involve
13 downtime. For what this device does and for what
14 it replaces the price is a steal."

15 Is it correct that the Sylfirm X's price
16 was an important factor for Dr. Duncan in choosing
17 the Sylfirm X?

18 A I don't believe Diane Duncan thinks it's a
19 steal because nothing is a steal, but it does what
20 it purports to do.

21 MR. AUTERI: Dr. Goldberg, we've been
22 going about an hour now, if you want to break now

1 we can take a short one or do you want to continue
2 and take a lunch break at some point. Whatever
3 your preference is.

4 THE WITNESS: I think you know me already.
5 I can go and go and go.

6 MR. AUTERI: I think we'll take a break
7 for your lunch at some point, but feel free to
8 give me a flag when you're about to wear down.
9 Same thing if the stenographer needs a break let
10 me know and let's keep moving.

11 BY MR. AUTERI:

12 Q Let's go back to your declaration which
13 was what we marked as Goldberg Deposition
14 Exhibit 1.

15 We are on Paragraph 48, that's what I want
16 to look at. If we scroll down to the end of
17 Paragraph 48 of your declaration, one of the
18 citations is a Exhibit 2079; is that correct?

19 A Yes.

20 Q So I would like to mark EX.2101 -- the
21 file with the file name EX.2079-Sylfirm X product
22 information, I'd like to mark that I'd like to

1 mark that Goldberg Deposition Exhibit 6 assuming
2 that's the next available number. And for
3 housekeeping purposes, what we're marking as
4 Goldberg Deposition Exhibit 6 is Exhibit 2079 from
5 IPR 2024-00386.

6 (A certain document was marked Goldberg
7 Deposition Exhibit 6 for identification,
8 as of 04/18/2025.)

9 BY MR. AUTERI:

10 Q We're going to go to the second page. At
11 the top you see the Viol name and underneath in
12 that is sort of a blackish box, Dr. Goldberg, do
13 you see where it says: "Sylfirm X FDA cleared
14 pulsed wave PW and continuous wave CW
15 radiofrequency microneedling device"?

16 A Yes.

17 Q Again, the first thing that is being
18 advertised here for the Sylfirm X is its ability
19 to operate in both pulsed wave and continuous wave
20 modes, correct?

21 A Correct. Can you tell me what year this
22 marketing material came out?

1 Q It looks like 20 -- actually I don't know
2 if it came out in 2023. Hold on. It has a mark
3 February 25, 2023 underneath it, but I can't tell
4 you for certain whether this was just downloaded
5 that day or --

6 A That is an important factor you do
7 realize?

8 Q Can you explain?

9 A Sure. I mean, what makes us buy
10 technology, as I said from the beginning, is its
11 safety first and that's based on the Na principle,
12 which is 2011. And subsequently the ability to
13 treat at multiple levels, that's the various
14 depths, which came out over the next two years.

15 I believe this marketing material is way
16 after that. And it's kind of like, you know, when
17 you buy a car the most important things are that
18 it drives and it's safe and then, you know what,
19 yeah, I'll look at the color of it and what the
20 tires look like and fancy.

21 So you're focusing on these little extras
22 which clearly are marketing materials and, again,

1 I don't know the year for this, but I'm sure this
2 does not go back to 2011 at the time of the Na
3 patent and 2015 publication in science by Na.

4 Q You do understand that I'm showing you the
5 product brochures you relied on in your
6 declaration, correct?

7 A That is correct but you're only focusing
8 on those aspects of it.

9 Q You know I didn't write the brochures,
10 correct?

11 A Absolutely.

12 Q And I didn't choose to put that the
13 Sylfirm X is the first and only FDA-cleared dual
14 wave and continuous wave device as the first thing
15 on every page, right?

16 A But that's a fact.

17 Q Correct. So the marketing material you
18 relied on in your declaration prominently touts
19 the dual wave technology of the Sylfirm X,
20 correct?

21 A I relied on multiple marketing materials.
22 You're focusing on the ones that talk about pulsed

1 wave and continuous wave.

2 Q So the ones we've looked at so far,
3 though, you would agree that they've been
4 prominently touting the dual wave technology in
5 the Sylfirm X, correct?

6 A The only ones you've shown me so far focus
7 on continuous wave and pulsed wave.

8 Q On Page 2 you see where it says at
9 300 micrometers papillary dermis?

10 A Yes.

11 Q And underneath it says: "FDA cleared
12 pulsed wave PW and continuous wave CW
13 radiofrequency microneedling device. Dual wave is
14 subdivided into eight different modes which can be
15 customized to individual patients taking into
16 account the indications, skin conditions to
17 provide a delicate treatment."

18 So, again, this part of Exhibit 2079 is
19 touting the versatility of the Sylfirm X's eight
20 different dual wave modes; is that correct?

21 A You've asked that question, I've answered
22 it, and I'll answer it again. That's what this

1 touts if.

2 Q We go to Page 3 do you see where it says
3 Sylfirm X Ultimate Decision?

4 A Yes.

5 Q Underneath it it says: Pulsed wave PW and
6 continuous wave CW and underneath that it says:
7 "FDA-cleared pulsed wave PW and continuous wave CW
8 radiofrequency microneedling device featuring
9 300-micron depth targeting both skin laxity,
10 Sylfirm X with it's eight different PW/CW modes
11 have proven its effectiveness and safety through
12 25-plus clinical studies and experiments" and
13 underneath it lists minimally invasive, short
14 treatment time, minimal downtime, safe and
15 comfortable, immediate results.

16 Dr. Goldberg, my question is is this -- is
17 Exhibit 2079 attributing the benefits of minimally
18 invasive, short treatment time, minimal downtime,
19 safe and comfortable, immediate results to the
20 Sylfirm X ability to operate in eight different PW
21 and CW modes?

22 A The Sylfirm X's ability to operate safely

1 and effectively starts with the fact that its
2 bipolar RF device following the Na principal, it
3 can get us to multiple levels and in addition to
4 that it has these options of pulsed wave and
5 continuous wave.

6 Q Right but here where it's talking about
7 the benefits of minimally invasive, short
8 treatment time, minimal down time, safe and
9 comfortable, immediate results, there's no mention
10 of the Na effect, correct?

11 A In this one paragraph, that's what it
12 focuses on.

13 Q Let's go back to your declaration that was
14 what we marked as Goldberg Deposition Exhibit 1.
15 Go to Paragraph 49.

16 In Paragraph 49 you state: "Training
17 materials for the Sylfirm X similarly explain that
18 the treatment producing the Na effect offers the
19 ability to safely treat the target tissue with
20 little damage to the epidermis."

21 And you cite to Exhibit 2062; is that
22 correct?

1 A Yes.

2 MR. AUTERI: So the next Exhibit I want to
3 mark has the title EX.2062-PO Material Sylfirm X
4 Clinical Presentation and let's go ahead and mark
5 this deposition confidential because we're going
6 to get into a confidential document.

7 For housekeeping purposes what is going to
8 be marked Goldberg deposition Exhibit 7 is
9 Exhibit 2062 from IPR 2024-00386.

10 (A certain document was marked Goldberg
11 Deposition Exhibit 7 for identification,
12 as of 04/18/2025.)

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10 Q Let's go back to your declaration, which
11 was Goldberg Deposition Exhibit 1. We'll go to
12 51, at the end of Paragraph 51, there is a
13 citation to Exhibit 2065; is that correct?

14 A Yes, yes.

15 Q So this is another confidential exhibit
16 just to log that.

17 MR. AUTERI: I'd like to make the next
18 exhibit Goldberg Exhibit 8, the document that has
19 a title name EX.2065-PR material SEIKOH
20 presentation.

21 (A certain document was marked Goldberg
22 Deposition Exhibit 8 for identification,

1 as of 04/18/2025.)

2 AV TECH MIELCAREK: One moment, Counsel.

3 MR. AUTERI: Just for the record what we
4 are marking Goldberg Deposition Exhibit 8 is
5 Exhibit 2065 of IPR 2024-00386.

6 AV TECH MIELCAREK: It will be on screen
7 in just a second.

8 BY THE WITNESS:

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12 THE REPORTER: Counsel, would you mind if
13 we took a break?

14 MR. AUTERI: Yes, let's go on a break.
15 Dr. Goldberg, do you want to take a lunch break or
16 let's do --

17 THE WITNESS: It depends how long in a
18 lunch is. This is Easter Friday, Easter weekend,
19 we don't need a two-hour break.

20 MR. AUTERI: I agree.

21 MR. SANDERS: Why don't we go off the
22 record and discuss this.

1 MR. AUTERI: Yes, let's go off the record
2 and discuss this.

3 (A lunch recess was had 10:40 a.m. to
4 11:10 p.m. CST.)

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1 A F T E R N O O N S E S S I O N

2 DR. DAVID J. GOLDBERG,

3 called as a witness herein, having been previously
4 duly sworn and having testified, was examined and
5 testified further as follows:

6 EXAMINATION (Resumed)

7 BY MR. AUTERI:

8 Q There's going to be a public version of
9 different sections but we're done with the
10 confidential exhibit so let's switch back to what
11 was marked as Goldberg Deposition Exhibit 1, which
12 is Dr. Goldberg's declaration. Go to
13 Paragraph 54.

14 In Paragraph 54, you state marketing of
15 the Sylfirm X in industry publications and by
16 physicians similarly touts the ability of the
17 Sylfirm X to provide treatment by administering RF
18 to produce localized coagulation that provides
19 effective treatment in a safe manner.

20 Then you say a popular industry
21 publication The Aesthetic Guide, noted that the
22 Sylfirm X product allows for a softer more

1 selective coagulation and then harnessing the Na
2 effect is what really sets it apart from the pack
3 and highlights why it is the leader.

4 My question is, Dr. Goldberg, you cite to
5 Exhibit 2042, correct?

6 A Yes.

7 Q And 2041 is The Aesthetic Guide that
8 you're talking about, correct?

9 A Yes.

10 MR. AUTERI: I would like to mark the next
11 exhibit which has a file name EX.2042-Aesthetic
12 Guide, and I believe this is going to be
13 deposition exhibit Goldberg Deposition Exhibit 9
14 which is also Exhibit 2042 of IPR 2024-00386.

15 (A certain document was marked Goldberg
16 Deposition Exhibit 9 for identification,
17 as of 04/18/2025.)

18 AV TECH MIELCAREK: Just a moment,
19 Counsel. It will be on screen.

20 BY MR. AUTERI:

21 Q Go to Page 6.

22 On Page 6, the bottom of the lefthand

1 column do you see a sentence that starts off with:
2 Softer, more selective coagulation...

3 A Yes.

4 Q So at the bottom of Page 6 of Exhibit 2042
5 there's a paragraph that starts with: "Softer,
6 more selective coagulation can be had in the basal
7 membrane and vascular structures when targeting
8 pigmentation and vascularity because of the
9 device's unique PW mode, which targets abnormal
10 small blood vessels while leaving surrounding
11 tissue virtually unaffected. Recovery is rapid."

12 The Aesthetic Guide is attributing the
13 softer more selective coagulation to the Sylfirm
14 X's PW mode?

15 A Yes.

16 Q And The Aesthetic Guide is characterizing
17 the Sylfirm X's PW mode as unique; is that
18 correct?

19 A Yes.

20 Q Go to Page 3, we see two columns again, if
21 we go to the paragraph that starts at the bottom
22 of Column 2, see if that's easier to read. So --

1 Exhibit 2042 continues on to Page 6, but it starts
2 with this device is a workhorse he continued, just
3 to confirm that they're talking about the Sylfirm
4 X here, right?

5 A Yes.

6 Q And then it says: "The pulsed wave mode
7 targets abnormal vascular pigmentation
8 specifically scars, melasma, rosacea and post
9 inflammatory," continues on Page 6,
10 hyperpigmentation, whereas the continuous mode
11 targets fine lines, wrinkles and skin tightening.
12 The superior functionality gives me both peace of
13 mind knowing that I can treat all skin types
14 effectively, but it also saves me time and offers
15 my patients little to no pain or downtime."

16 Is that correct?

17 A That's correct.

18 Q And this paragraph attributes the ability
19 to treat all skin types effectively as being
20 related to the Sylfirm X's ability to operate in
21 both continuous wave and dual wave modes?

22 A Yes.

1 Q Let's go back to your declaration which is
2 Goldberg Exhibit 1 and we'll go to the next
3 paragraph.

4 Likewise Martin Braun, MD published a
5 testimonial in another popular periodical, Prime,
6 explain how the Na effect provides save effective
7 treatment because the teardrop shaped thermal
8 effect minimizes heat damage to the epidermis and
9 maximizes the therapeutic effect at the target and
10 you cite to Exhibit 2066, correct?

11 A Yes.

12 MR. AUTERI: I'd like to mark the next
13 exhibit, which would be Goldberg Deposition
14 Exhibit 10, and this is Exhibit 2066 from IPR 2024
15 and, sir, the file name is EX.2066-Braun article.

16 (A certain document was marked Goldberg
17 Deposition Exhibit 10 for identification,
18 as of 04/18/2025.)

19 AV TECH MIELCAREK: I'm marking it right
20 now. It will be on screen in a few seconds.

21 BY MR. AUTERI:

22 Q Thank you. Go to page -- it says Prime

1 promotion, Sylfirm X revolutionizes the clinical
2 applications of RF microneedling, underneath it
3 says Martin Braun discuss the experience using the
4 Sylfirm X and the results he achieves on skin
5 color; is that what it says?

6 A Yes.

7 Q The very first thing, Dr. Braun -- for
8 skin rejuvenation, tightening and scar treatment
9 are delivering the thermal effect of
10 radiofrequency into the skin with needles.

11 Sylfirm X developed and manufactured by the Viol
12 Co, Ltd., South Korea, is the world's first and
13 only RF microneedling device equipped with dual
14 wave RF continuous and pulsed wave.

15 The Sylfirm X -- to say, Dr. Goldberg,
16 that the first thing that Dr. Braun touts about
17 the Sylfirm X is it is the first and only RF
18 microneedling device equipped with dual wave RF?

19 A I mean, that's a fact.

20 Q On Page 3, the next page at the very top
21 requotes Dr. Braun's comment that Sylfirm X
22 developed and manufactured by Viol Co., Ltd. South

1 Korea is the world's first and only RF
2 microneedling device equipped with dual wave RF;
3 is that what it says?

4 A Yes.

5 Q And if you scroll down, if we go back to
6 Page 2, there is in the middle column the bigger
7 blue title Sylfirm X.

8 Do you see where it says Sylfirm X in
9 blue?

10 A Yes.

11 Q Underneath that it says Sylfirm X can
12 produce dual wave RF pulses both continuous wave
13 CW and unique pulsed waves PW. CW is the typical
14 RF pulse generated by the existing RF
15 microneedling devices and CW is a single long
16 pulse similar to along pulsed laser. CW RF
17 produces strong heat in the tissue resulted in co
18 aggregated collagen and is used primarily for
19 treatment of wring else, large pores, skin laxity
20 and acne scars. On the other hand, PW is the
21 world's first RF irradiation method developed and
22 an applied by Viol Co., Ltd. Which produces a

1 string of short pulses similar to Q-switched
2 lasers. Through numerous studies and experiments,
3 Sylfirm X uses a train of four different pulses to
4 effectively treat a greater variety of skin
5 conditions.

6 My question is does Dr. Braun attribute
7 the ability to treat four different skin pulses to
8 Sylfirm X's pulsed wave mode?

9 A He's not talking about the Na patent.
10 He's not talking about how deep the needles go.
11 He's talking about the next generation and that is
12 this pulsed wave system. That's what it does.

13 Q Going back to the third page, going back
14 to the third page and we look at the second
15 paragraph, the leftmost column, do you see the
16 sentence that starts with: In order to treat the
17 influencing, are you able to see -- is this big
18 enough for you to see the in order to treat the
19 influencing?

20 A Yes.

21 Q So then the sentence I'm looking at says:
22 "In order to treat the influencing factors of

1 melasma and rosacea it is necessary to target the
2 superficial papillary dermis as well as the
3 basement membrane at a depth of approximately
4 0.3 millimeters. Sylfirm X appears to be the only
5 RF device that accurately targets and treats at
6 the 0.3-millimeter skin depth. Also pulsed RF
7 treatment at a depth of 0.3 millimeters has the
8 advantage of little procedural pain with virtually
9 no prolonged redness or downtime."

10 Is it correct to say Dr. Braun is
11 attributing the Sylfirm X's pulsed RF as giving
12 the advantage of little pain and virtually no
13 prolonged redness or down time?

14 A In trying to treat these entities, that's
15 correct.

16 Q Let's go back to your declaration which is
17 Goldberg Exhibit 1 and look at Paragraph 58, you
18 can go back up to the top, the section right
19 before 57 says: Industry praise and peer
20 recognition, and under Paragraph 57, there is a
21 subtitle one the Sylfirm X RF microneedling system
22 and then Paragraph 58 starts, and in Paragraph 58

1 you say: "Concerning the Sylfirm X product in
2 2020, the manufacturer of the Sylfirm X Viol won
3 the world class product of Korea award from the
4 Minister of Trade, Industry and Energy of South
5 Korea due to its contributions to and developments
6 toward aesthetic medical devices like the Sylfirm
7 X.

8 And you cite to Exhibit 2067; is that
9 correct?

10 A Yep.

11 MR. AUTERI: So I'd like to make the
12 document that has the file name
13 EX.2067-certificate the next exhibit. I believe
14 that should be Goldberg Exhibit 11. And that is
15 also Exhibit 2067 to IPR 2024-00386.

16 (A certain document was marked Goldberg
17 Deposition Exhibit 11 for identification,
18 as of 04/18/2025.)

19 AV TECH MIELCAREK: I apologize, Counsel,
20 my Adobe Acrobat just froze.

21 MR. AUTERI: No problem.

22 AV TECH MIELCAREK: I'm going to have to

1 probably reset it.

2 MR. AUTERI: It happens to the best of us.

3 AV TECH MIELCAREK: Please bear with me.

4 I'll try to do it as quickly as possible.

5 MR. AUTERI: Should we go off the record.

6 Do you need a little time?

7 AV TECH MIELCAREK: I don't know how long

8 this is going to take. This is up to you. I'll

9 try to be as brief as possible fixing it.

10 It looks like it's fixed so I should be up

11 and running in just a moment.

12 BY MR. AUTERI:

13 Q This is Exhibit 2067 that you cited in

14 your declaration, and at the top it says

15 No. 2020-330, and underneath that it says: World

16 Class Product of Korea, 2020. Underneath that it

17 says: Viol Co, Ltd, and underneath that it says:

18 "In recognition of your company's contributions to

19 the future development of aesthetic medical

20 devices for skin rejuvenation and in honor of your

21 dedicated commitment to Korea's high technology

22 exports and national competitiveness."

1 And it's dated December 9, 2020 it's
2 signed or sealed by Sung Yunmo, Minister of Trade,
3 Industry & Energy
4 Republic of Korea.

5 My question to you Dr. Goldberg is this
6 certificate does not mention the Sylfirm X
7 specifically, correct?

8 A No.

9 Q To confirm, the Sylfirm X is not Viol's
10 only product?

11 A But this is the product that it's
12 referencing to --

13 Q How do you know that this certificate is
14 specifically for the Sylfirm X?

15 A Because I interacted with the company
16 because I've lectured in Korea. I know that
17 that's what they awarded this for.

18 Q And this certificate Exhibit 2067 it does
19 not mention anything about coagulation, correct?

20 A No, of course not.

21 Q And there's nothing here that specifically
22 ties any praise to any claim limitations of the

1 '836 patent; is that correct?

2 A There is simply a recognition of the
3 quality of the product.

4 Q And you agree there's nothing in this
5 certificate that ties any praise to any claim
6 limitations of the '836 patent?

7 A This has nothing to do with the '836
8 specifically. It has to do with the device that
9 it's based on.

10 Q Let's go back to your declaration.

11 MR. AUTERI: David, is there a way to put
12 that back into the tabs. It would be Goldberg
13 Exhibit 1.

14 AV TECH MIELCAREK: Yes, just a moment,
15 please.

16 BY MR. AUTERI:

17 Q Looking at Page 33 of your declaration,
18 let's look at Paragraph 59, and Paragraph 59, you
19 say: "Additionally as explained above
20 publications such as The Aesthetic Guide and Prime
21 praised the Sylfirm X product and linked its
22 benefits to the technology claimed by the '836

1 patent. Likewise, respected key opinion leaders
2 in the industry such as Dr. Randy Miller and
3 Dr. Seiko Kuo have also favorably reviewed the
4 Sylfirm X device."

5 And you cite to Exhibit 2043, correct?

6 A Correct.

7 Q So I'd like to make Exhibit 2043 Sylfirm X
8 testimony as the next exhibit. I believe that is
9 be Goldberg Deposition Exhibit 12 and that is also
10 Exhibit 2043 of IPR 2024-00386.

11 AV TECH MIELCAREK: I'm marking it now.

12 (A certain document was marked Goldberg
13 Deposition Exhibit 12 for identification,
14 as of 04/18/2025.)

15 BY MR. AUTERI:

16 Q Is that easy for you to see or would you
17 like it any bigger?

18 A No, that's fine.

19 Q At the top it says Sylfirm X and then
20 theirs is two testimonials underneath it, one by
21 Dr. Randy Miller, MD and the other by Dr. Seiko
22 Kuo, MD. Let's look at the first one, Dr. Randy

1 Miller.

2 Dr. Randy Miller says: "The beautiful
3 thing about Sylfirm X is that it is a
4 radiofrequency microneedling device and has both
5 dual wave, continuous wave and pulsed wave so it
6 can treat all skin types and different colors. It
7 can go as superficial as 300 microns from the skin
8 surface where the pigment problems are. It can
9 also go down to had millimeters for skin
10 tightening. The Sylfirm X is a great device and
11 I'm very happy to be using it and our patients are
12 even more happy."

13 Dr. Goldberg, is it correct to say
14 Dr. Randy Miller is praising the Sylfirm X's
15 ability to operate in both continuous wave and
16 pulsed wave modes?

17 A So I'm going to back up a little bit
18 because I think this is a good time to do it.

19 I've heard Randy Miller speak many times
20 about this device and his lectures start by
21 talking about the Na principle first. That is at
22 the core of this and I've said this you're

1 focusing the whole deposition on for the most part
2 on the dual wave system. That is the nice thing
3 about the device, but it wouldn't exist without
4 the patent, without the Na principle, without the
5 ability to have multiple needles penetrating and
6 so you're taking this out of context. Randy
7 Miller talks about that patent all the time in
8 lectures. I've never heard Dr. Kuo speak so I
9 don't know the answer to that.

10 Q But my question is you chose to cite this
11 document in your declaration, correct?

12 A I did.

13 Q You didn't cite something else from
14 Dr. Randy Miller in your declaration, correct?

15 A I've cited many things in the record but
16 you're taking it out of context and every time I
17 cite these things it's always going back to what
18 the device is all about, not one specific part of
19 that device.

20 Q Just to be clear, you cited this document
21 in your declaration as showing praise for the
22 patented technology; is that correct?

1 A I cited this as showing praise to the
2 Sylfirm X.

3 Q Okay. So you're just saying Dr. Randy
4 Miller was praising the Sylfirm X?

5 A I don't understand your question.

6 Q Let's back up.

7 So the first thing Dr. Randy Miller says
8 in Exhibit 2043 is the beautiful thing about the
9 Sylfirm X is that it is a radiofrequency
10 microneedling device and has both dual wave,
11 continuous wave and pulsed wave so it can treat
12 all skin types and different colors.

13 Is it correct that Dr. Randy Miller is
14 praising the Sylfirm X's ability to operate in
15 dual wave, both continuous and pulsed wave,
16 because it can treat all skin types and different
17 colors?

18 A Because it is the Sylfirm X based on the
19 Na principle and because it has continuous wave
20 answer pulsed wave.

21 Q Nothing in Dr. Randy Miller's testimonial
22 here mentions the Na effect, correct?

1 A This is a marketing material once the
2 development of the continuous wave and pulsed wave
3 system came out. It doesn't disregard what the
4 machine is based on.

5 Q I'm just asking what this document says,
6 so in this document, Dr. Randy Miller does not
7 praise the Na effect, correct?

8 A This particular paragraph, single
9 paragraph talks about the dual wave system.

10 Q And from this paragraph is the only
11 paragraph that has Dr. Randy Miller's testimonial,
12 correct?

13 A This is one paragraph in my what, 39-page
14 declaration, one paragraph, yes.

15 Q In this document, there's only two
16 paragraphs, correct?

17 A This particular document has only two
18 paragraphs, right.

19 Q And the one paragraph for Dr. Randy
20 Miller, Dr. Randy Miller doesn't mention the Na
21 effect, correct?

22 A That single paragraph does not mention the

1 Na effect.

2 Q It doesn't mention anything to do with the
3 claimed technology of the '836 patent, correct?

4 A Because the Sylfirm X is based on the Na
5 principle.

6 Q Right but Dr. Randy Miller is not
7 mentioning that at all in his testimony, correct?

8 A It doesn't have to at this point. This is
9 a marketing material long past the time of the
10 development to beyond.

11 Q You're saying this links to the benefits
12 of the claimed technology of the '836 patent,
13 correct?

14 A It does. Sylfirm X is based on the '836
15 patent. It's inherent in that name. Now, these
16 are additional points that make it -- you asked me
17 early on if I thought this was important and I
18 said to you it is one of the issues that we would
19 think about but it's not the primary driving force
20 to buying the machine.

21 Q But looking at this document that you
22 cited, Dr. Randy Miller does not attribute the Na

1 effect to any of the praise he has in that one
2 paragraph, correct?

3 A There's nothing in this paragraph about
4 the Na effect. That doesn't mean that Dr. Randy
5 Miller doesn't thinking that the Na effect is the
6 reason why this machine is so terrific.

7 Q I'm just asking about this one paragraph
8 and I think you confirmed that so the next
9 paragraph is Dr. Seiko Kuo's testimony, and he
10 says: "I've been using Sylfirm X for two years.
11 The advantage of the Sylfirm X is that it enables
12 us to improved damaged basement membrane condition
13 of the epidermis."

14 To back up, we were discussing the Sylfirm
15 X's pulsed wave mode as being useful for treating
16 damaged basement membranes, correct?

17 A As vasculature.

18 Q So this advantage here is talking about
19 the pulsed wave mode, correct?

20 A Correct.

21 Q And the next sentence says:

22 "for skin that is originally damaged by a

1 photoaging and melasma, Sylfirm X is a very safe
2 starter to make the skin firm and strong."

3 When we look back, the Sylfirm X brochure
4 explained that the dual wave mode was used to
5 treat melasma; is that correct?

6 A The brochure refers to the pulsed mode to
7 treat melasma.

8 Q The next one says: "The Sylfirm X is good
9 for combination treat with lasers. I recommend
10 Sylfirm X because it can be used for a variety of
11 purposes. Doctors who often use lasers in
12 aesthetic dermatology will surely find it very
13 helpful."

14 So Dr. Kuo also believes the ability of
15 the Sylfirm X to be used in conjunction with
16 lasers is a useful attribute in the Sylfirm X; is
17 that correct?

18 A We do this all the time in every day
19 practice.

20 Q So in the testimony for Dr. Seiko Kuo, he
21 doesn't mention the Na effect; is that correct?

22 A This paragraph does not mention the Na

1 effect.

2 Q So no other paragraphs exist in this
3 document, correct?

4 A The Na effect is not mentioned in these
5 two particular paragraphs. The Sylfirm X is based
6 on the Na principle.

7 Q So then this entire document doesn't refer
8 to the Na effect; is that correct?

9 A Sylfirm X is almost -- Na principle, are
10 the two letters N-a mentioned here, no.

11 Q But neither testimony or testimonial
12 references teardropped shaped coagulation around
13 the needles, correct?

14 A That's not what this is for. Coagulation
15 on the needles is either scientific basis for or
16 the basis for this lawsuit. This is a marketing
17 material. I can assure you people buying this
18 technology are not going to start thinking about
19 who Na is. That's not what this is based on.

20 Q Let's go back to your declaration and
21 we've got Paragraph 60, that's Goldberg Exhibit 1.
22 So you state in 2015 Dr. Na published an article

1 scratch that. Let's actually mark a new exhibit.
2 If has the file name EX.2044-Sylfirm X clinical
3 paper one.

4 (A certain document was marked Goldberg
5 Deposition Exhibit 13 for identification,
6 as of 04/18/2025.)

7 MR. AUTERI: I believe that's going to be
8 Goldberg deposition Exhibit 13. It's also
9 EX.2044.

10 AV TECH MIELCAREK: I'm sorry, Counsel. I
11 was talking and I realized my microphone was down.
12 There are two documents marked EX.2044.

13 MR. AUTERI: The one that ends with one,
14 by any chance, clinical paper one.

15 AV TECH MIELCAREK: Just a second.

16 MR. AUTERI: Thank you.

17 BY MR. AUTERI:

18 Q So this is Goldberg Deposition Exhibit 13.
19 On the first page, Dr. Goldberg, you see it says:
20 Sylfirm X clinical paper summary?

21 A Yes.

22 Q And towards the below it says Viol.

1 Is it correct to assume that this clinical
2 paper was created by Viol?

3 A I don't know that.

4 Q You're not sure who is the source of this
5 document just based on the first page or would you
6 be able to tell if you took control and looked
7 through the document?

8 A I was given the document. I couldn't see
9 who put it together. I assume Viol put it
10 together but I don't know that.

11 Q Fair enough. If we go to Page 4, at the
12 top it says skin reaction, Na effect and
13 underneath that is what looks like a picture of an
14 article and next to it appears to be the title:
15 Electromagnetic initiation propagation of bipolar
16 radiofrequency tissue reactions via invasive
17 non-insulated microneedle electrodes, and the
18 first listed author is Jongju Na?

19 A Correct.

20 Q Dr. Na is the inventor of the '836 patent,
21 correct?

22 A Correct.

1 MR. AUTERI: I'd like to mark another
2 exhibit. It's the file name EX.2045-Cho study I'd
3 like to make that Goldberg Deposition Exhibit 14.

4 (A certain document was marked Goldberg
5 Deposition Exhibit 14 for identification,
6 as of 04/18/2025.)

7 MR. AUTERI: And this is also Exhibit 2045
8 of IPR 2024-00386.

9 AV TECH MIELCAREK: One second, please.

10 BY MR. AUTERI:

11 Q This is Exhibit 2045, Dr. Goldberg, the
12 title in this document is: In vivo skin reactions
13 from pulsed-type, bipolar, alternating
14 current radiofrequency treatment using invasive
15 non-insulated electrodes.

16 Do you see they have the authors listed
17 below that?

18 A Yes.

19 Q The first named one is SB Cho.

20 Do you happen to know who that is?

21 A No.

22 Q The next one is J Na and if we look lower

1 in the page, I'll make this bigger, at the bottom
2 there's a note that says Sung Bin Cho and Jongju
3 Na contributed equally to this work and if you
4 look back up, the first name author is SB Cho.

5 So do you agree that this article purports
6 that Dr. Na and SB Cho are equally the first
7 listed author -- strike that.

8 At the bottom it says sung bin Cho and
9 Jongju Na contributed equally to this work, the
10 first named author is SB Cho.

11 Is it correct to assume that SB Cho Sung
12 Bin Cho?

13 A It would seem so, yes.

14 Q So Dr. Na contributed equally to this
15 author as the first named author?

16 A Usually the first author is the one who
17 writes it. It's not necessarily the person who
18 has done the most work on it.

19 Q Look at the bottom lefthand column on
20 Page 2, there is a section do you see a
21 Section 2.1, pulse type bipolar alternating
22 current RF using non-insulated microneedle

1 electrodes?

2 A Yes.

3 Q "This is a pulse-type bipolar alternating
4 current arc device equipped with non-insulated
5 microneedle electrodes (SYLFIRM; Viol, Kyunggi,
6 Korea) emitting 2-MHz RF oscillations was utilized
7 to evaluate RF tissue reactions on in vivo
8 hairless mouse skin. Two pulse type bipolar RF
9 devices were utilized: One emitting 3 pulse
10 cycles at a gated on-time pulse width of 40
11 milliseconds and a power of 3.3 watts/pulse pack
12 (type A) and the other emitting 5 pulse cycles at
13 an on-time pulse width of 30 milliseconds and a
14 power of 3 watts/pulse pack (type B)."

15 Just to confirm the device they're
16 discussing here uses -- doesn't use continuous
17 pulse, correct?

18 MR. SANDERS: Objection. Vague.

19 BY THE WITNESS:

20 A I don't know that. There's nothing there
21 that says that to me.

22 BY MR. AUTERI:

1 Q Let's back up a little bit actually.

2 So then the first one says a pulse type
3 bipolar alternating current RF device equipped
4 with non-insulated microneedle electrodes and then
5 it says Sylfirm X, is it correct to assume that
6 the pulse type bipolar alternating current RF
7 device they are referring to is the Sylfirm X?

8 A Well, it's at least Sylfirm. I don't know
9 if it's Model X.

10 Q And if we go back, they discuss two
11 different pulse widths used, one was a
12 40-millisecond and the other was a 30-millisecond;
13 is that correct?

14 A That's correct.

15 Q Go back to it should be Goldberg
16 Deposition Exhibit 3. Put that back up on the
17 screen?

18 AV TECH MIELCAREK: One moment, please.

19 BY MR. AUTERI:

20 Q Just to confirm what we had marked as
21 Goldberg Exhibit 3 was Exhibit 2037 of
22 IPR-2024-00386 Page 7 at the top do you see where

1 it says CW mode, continuous wave mode?

2 A Yes.

3 Q At the bottom it has a table of four
4 different CW modes with different pulse durations;
5 is that correct?

6 A Correct.

7 Q And the smallest pulse duration is
8 20 milliseconds?

9 A That's correct.

10 Q And the highest is 300 milliseconds?

11 A This is in humans, yes.

12 Q If we go back to Page 6, at the top it
13 says PW mode, pulsed wave mode and if we scroll
14 down this simulation four columns for four
15 different pulsed wave modes, is that correct?

16 A These are pulse waves in humans, yes.

17 Q And the first PW mode operates with a
18 pulse ratio of 30-millisecond, correct?

19 A On the device used in humans, yes.

20 Q Second pulsed mode is has a pulse duration
21 of 40 milliseconds when used on --

22 A Again, on the device used on human skin.

1 Q If we go back to what was marked Goldberg
2 Exhibit 14, which was Exhibit 2045 of the IPR, we
3 saw the two pulses used in the device was a
4 40-millisecond one and a 30-millisecond one.

5 Do you agree that those pulse widths do
6 not match the continuous wave pulse widths we just
7 looked at?

8 A These of the modes used on a mouse. You
9 can't compare mouse skin with human skin. So I
10 don't know that these are continuous versus
11 pulsed.

12 Q Well, if you apply 5 pulses, that's not
13 one single pulse, correct?

14 A When you use continuous wave also you can
15 press the pedal and also have pulses delivered.
16 What you're trying to focus on is the 30 and
17 20-millisecond and state that is the same that was
18 used in humans in the pulsed wave. I have no way
19 of knowing that.

20 Q If we go to the Sylfirm X brochure that
21 was Goldberg Deposition Exhibit 3, under the CW
22 mode it describes it as using a single long pulse,

1 correct?

2 A That can be delivered in more pulses,
3 that's the point.

4 Q If we go back to Goldberg Exhibit 14,
5 which is Exhibit 2045, is it correct to say that
6 you don't know which mode of the Sylfirm X was
7 used to do the test in this article?

8 A In these animals, I know correct, but you
9 asked me whether that's the exact same thing that
10 is being done in humans in the pulse mode and I
11 said I don't know that.

12 Q Oh, I'm just wondering whether this is
13 discussing the Sylfirm X's continuous mode or the
14 pulsed wave mode.

15 Does that make it clearer so I guess I'll
16 just ask the question again and maybe you already
17 answered it, if this device is -- sorry.

18 A What you're asking me is whether the
19 device described in this paper used on mice is the
20 same device that we use on humans and the answer
21 is I don't know and then you asked me if the 30,
22 40-millisecond used in this which you are

1 suggesting is the pulse mode and if that's the
2 same pulse mode is used in humans and the answer
3 is I don't know.

4 Q Similar you wouldn't know if they used a
5 continuous wave mode for this test?

6 A There's no way of knowing that from this.

7 Q Okay. Fair enough.

8 MR. AUTERI: I'll mark another exhibit.
9 It should be the document with the file name
10 EX.2046-You study. We'll make that exhibit
11 Goldberg Deposition Exhibit 15. And that is also
12 Exhibit 2046 of IPR 2024-00386.

13 (A certain document was marked Goldberg
14 Deposition Exhibit 15 for identification,
15 as of 04/18/2025.)

16 AV TECH MIELCAREK: Please stand by.

17 BY MR. AUTERI:

18 Q The title of Exhibit 2046 is: Therapeutic
19 effects of a new invasive pulsed-type bipolar
20 radiofrequency for facial erythema associated with
21 acne vulgaris and rosacea.

22 My question is when we looked at the

1 Sylfirm X's marketing material do you recall the
2 marketing material attributing the pulsed wave
3 mode of the Sylfirm X as being useful for acne
4 vulgaris and rosacea?

5 A Yes.

6 Q If we go to Page 6, the last paragraph,
7 the last paragraph of the study says: "Despite
8 these limitations the present study is the first
9 to show the efficacy of short pulsed-type IPBRF on
10 PIE associated with rosacea or acne vulgaris."

11 To confirm, this article is discussing
12 short pulse in treating rosacea and Acme vulgaris
13 is it correct to assume this is discussing the
14 Sylfirm X's pulsed wave mode?

15 A Yes.

16 Q And the next sentence says this study
17 suggests that IPBRF could be an effective and save
18 adjacent option for treating facial erythema
19 disorders?

20 A You need to go to medical school. Your
21 pronunciations are not the best.

22 Q I need to go to more school than just

1 medical -- feel free to correct me if I'm hurting
2 your ears with my erroneous pronunciations.

3 A That's all right.

4 Q Just to back up, do you agree that
5 Exhibit 2046 is praising the use of Sylfirm X's
6 pulsed wave modes for treating rosacea and acne
7 vulgaris?

8 A Yes.

9 Q Let's go back to your exhibit -- your
10 declaration which was Goldberg Exhibit 1. Let's
11 look at Paragraph 62, Paragraph 6 it you state:
12 "Likewise, technical and marketing material for
13 the Virtue ULTRA RF Microneedling device focus on
14 how the Vivace ULTRA is designed to avoid bad
15 outcomes like 'heat-induced hyperpigmentation.'

16 And you cite to Exhibit 2069, correct?

17 A Uh-huh.

18 Q And you refer to that as the Allure
19 article?

20 A That's correct.

21 MR. AUTERI: So I'd like to mark the file
22 with the file name EX.2069/Allure as Goldberg

1 Deposition Exhibit 16.

2 (A certain document was marked Goldberg
3 Deposition Exhibit 16 for identification,
4 as of 04/18/2025.)

5 MR. AUTERI: And this is also Exhibit 2069
6 of IPR 2024-00386.

7 BY MR. AUTERI:

8 Q Go to Page 6. Page 6 there is an article
9 that starts: Vivace Ultra: Radiofrequency
10 microneedling for dark skin, am I correct that
11 this is the article you were referring to in your
12 declaration we just talked about?

13 A Yes.

14 Q If we go about eight lines, there is a
15 line that says: "According to Dr. Shamban, RF
16 microneedling is generally a colorblind treatment.
17 Unlike many other energy-based devices,
18 it is not using heat, light, or any energy
19 wavelength that is chromophore dependent or
20 targets melanin in the skin. Therefore, when it's
21 used correctly by an experienced provider, it's
22 safe for patients of all type of

1 mixed ethnicities and the darkest tones on the
2 Fitzpatrick scale. The Vivace Ultra is the first
3 RF microneedling device to also include
4 ultrasound imaging and mapping, which could mean
5 the results are more precise. Vivace Ultra has
6 the unique capability to visualize through
7 ultrasound guidance the layers of skin one is
8 targeting, says Dr. Frank. This detailed view
9 allows doctors to tailor the needle depth to a
10 patient's skin and if you need to adjust a needle
11 to meet a specific goal, smoothing acne scars or
12 tightening the neck, for example, or to avoid a
13 bad outcome like heat-induced hyperpigmentation,
14 the personalized depth measurements Vivace Ultra
15 provides make it less of a guessing game."

16 So my question to you, Dr. Goldberg, is
17 this article in Exhibit 2069 is praising the
18 Vivace ultra's ultrasound technology; is that
19 correct.

20 A It's a great marketing gimmick, yes.

21 Q And this allows just on imaging and
22 mapping allows for doctors to tailor the needle

1 depth to a patient's skin, correct?

2 A It could lead to more precision. It
3 doesn't but it could, yes.

4 Q It would depend slightly on the operator,
5 of course, right?

6 A It's a gimmick. It's not in most of the
7 radiofrequency, it's the way that Vivace got to
8 sell their device.

9 Q Just to confirm, the '836 patent doesn't
10 claim any sort of ultrasound imaging or mapping
11 technology; is that correct?

12 A That's correct.

13 Q And you might need to take control of this
14 if you want but there is nowhere in this article
15 about the Vivace that discusses lowering
16 concentrated coagulation zones around the tips of
17 the needles?

18 A This is Allure Magazine. Of course they
19 don't talk about the '826 patent in here.

20 Q So then you would agree that this article
21 is not actually praising any claimed features of
22 the '836 patent?

1 A It's praising the microneedling Vivace
2 which is based on the '836 patent.

3 Q Right but it doesn't mention any specific
4 technology -- this article doesn't mention any
5 technology specifically related to the '836
6 patent, correct?

7 A Sure, it does. Vivace's.

8 Q So you're saying just because it mentions
9 Vivace, it's giving praise to the Na effect?

10 A I'm sorry. I don't understand your
11 question.

12 Q Is the only thing that you see here that
13 ties this article to the '836 patent the fact that
14 it's discussing the Vivace?

15 A This article is was one more piece of
16 evidence of a device on the market based on the Na
17 principle which is successful, it happens to have
18 ultrasound and that's what they're talking about
19 here.

20 Q This article doesn't say the Vivace was
21 successful because it harnesses the Na effect; is
22 that correct?

1 A I would not expect an article in Allure
2 Magazine to talk about the Na effect because of
3 its content.

4 Q Let's go back to your declaration which
5 was Goldberg Deposition Exhibit 1. Let's look at
6 Paragraph 63 in Paragraph 63 you say:
7 Additionally, the benefits of the '836 patent such
8 as a decrease in patient downtime, increased
9 treatment effectiveness and less pain compared to
10 other treatments such as fractional lasers are
11 also recognized by EndyMed and are advertised as
12 benefits of the EndyMed RF microneedling system."

13 And you cite to Exhibit 2048, correct?

14 A Yes.

15 MR. AUTERI: I'd like to make a next
16 Exhibit it's a file named EX.2048-Harth study,
17 which should be Goldberg Exhibit 17, and for
18 housekeeping this is also Exhibit 2048 of IPR
19 2024-00386.

20 (A certain document was marked Goldberg
21 Deposition Exhibit 17 for identification,
22 as of 04/18/2025.)

1 AV TECH MIELCAREK: Please stand by.

2 BY MR. AUTERI:

3 Q So this is Exhibit 2048. Dr. Goldberg,
4 the title of this document is: Depressed acne
5 scars, effective minimal downtime treatment with a
6 novel smooth motion non-insulated microneedling
7 radiofrequency technology.

8 Reading if we look down at the abstract
9 the abstract the background says: "The
10 microneedling fractional RF handpiece used in our
11 study (Intensif Handpiece, EndyMed Medical
12 Caesarea, Israel) is a novel handpiece that uses a
13 tip with 25 noninsulated gold-plated microneedle
14 electrodes. The needles are inserted into the
15 skin by a specially designed electronically
16 controlled smooth motion motor minimizing patient
17 discomfort."

18 So from that first sentence of the
19 abstract and the title, one of the things this
20 article is praising is a novel smooth motion
21 needle insertion method; is that correct?

22 A That's correct in here, yes.

1 Q If we go to Page 2, the last paragraph, if
2 you look about five lines down in the last
3 paragraph there is a sentence that says the
4 needles are inserted into the skin by a specially
5 designed electronically controlled smooth motion
6 motor minimizing patient discomfort.

7 So to confirm, the '836 patent doesn't
8 claim a smooth motion motor; is that correct?

9 A All I can tell you is as you know I have
10 this device and when I use the Intensif and when I
11 use the Sylfirm X, it's the exactly the same when
12 it enters the skin.

13 Q This article attributes minimizing patient
14 discomfort with smooth motion motor of the EndyMed
15 device; is that correct?

16 A That's what the article states, yes.
17 There are some devices that rip the skin as they
18 go through the skin, this one does not and neither
19 does Sylfirm X.

20 Q The fourth paragraph, do you see it starts
21 with microneedle RF handpiece. This sentence
22 says: "Microneedle RF handpieces can be

1 differentiated based on two main features. First
2 is the mode of insertion into the skin, fixed
3 needles inserted manually, needles inserted
4 mechanically using a spring and the latest
5 generation using electronically controlled
6 motorized gradual insertion. Second important
7 differentiating features involves the needle
8 quality basically the sharpness and the coating
9 material."

10 Dr. Goldberg, do you agree this article is
11 saying that the two main features that
12 differentiate RF handpieces is the mode of
13 insertion of needles into the skin and the needle
14 quality?

15 A This article says that this particular
16 device works by this particular method. It's not
17 a comparison study to some other device.

18 Q This article says that these two features
19 are important differentiating features, correct?

20 A They are way down the list, way down the
21 list. Na is first, depth is next and we talked
22 about pulsed wave, continuous wave, now how the

1 needles are delivered. My God, there are multiple
2 different ways of doing it. They all work.

3 Q But this article is saying that mode of
4 insertion and needle quality are important
5 differentiating features?

6 A Right, you want needles that insert moving
7 it into the skin, no doubt that's correct.

8 Q So is that an important factor when
9 deciding which RF microneedling device you would
10 pick to use on patients?

11 A It's an assumption that they're all going
12 to do that and they all do that.

13 Q Page 69 fourth full paragraph do you see
14 where it says the reduced pain, this sentence says
15 the reduced pain experience in microneedle RF
16 treatment may be related to sharpness of the
17 needles and the unique smooth needle motorized
18 insertion.

19 So do you agree this article is
20 attributing reduced pain to the sharpness of the
21 needles and the unique smooth --

22 A It may be one factor.

1 Q You've reviewed all of Exhibit 2048,
2 correct?

3 A Yes.

4 Q Nowhere specifically in Exhibit 2048 that
5 discusses the benefits of using the '836 patent's
6 claimed technology, is that correct?

7 A You wouldn't expect it to. This is a
8 clinical paper.

9 Q Three paragraphs up from the conclusion on
10 Page 6, it says: We believe that the use of
11 gold-plated non-insulated needles allows multiple
12 clinical advantages over insulated and stainless
13 steel needles in contrast to the insulated needles
14 that in the RF through a small area near their
15 tip, the novel noninsulated gold-plated needle
16 emit RF through the whole length allowing heating
17 ever three times the volume.

18 So my question is it correct that this
19 article is praising the use of gold-plated
20 non-insulated needles?

21 A There is continued controversy as to what
22 the needles should be like. They are all over the

1 place, they all work, this particular article
2 written by an Israeli investigator who obviously
3 works with EndyMed. I know her well. She likes
4 it for this reason, but there are plenty of
5 devices -- that have -- this is one.

6 Q The next paragraph says: "Gold-plating
7 allows better RF conductivity than stainless steel
8 else and thus better treatment efficacy."

9 Do you agree with that statement?

10 A No.

11 Q If we look at that last paragraph before
12 the conclusion, the last sentence says -- the last
13 sentence of the last paragraph before the
14 conclusion says: "Digitally controlling the
15 penetration depth of the needles with automatic
16 motorized insertion allows better control of
17 patient experience reducing discomfort and side
18 effects."

19 Is it correct to say Exhibit 2048 is
20 praising the use of digitally controlling the
21 penetration depth --

22 A All these systems have some sort of

1 robotic type system that is digitally, some of
2 them are manually controlled, yeah, that's
3 correct, but it's not unique to this device.

4 Q So I am going to Mr. Sanders if he has any
5 redirect?

6 MR. SANDERS: Yes, thank you, Counsel, I
7 do, just briefly.

8 EXAMINATION

9 BY MR. SANDERS:

10 Q Dr. Goldberg, you were asked earlier about
11 purchasing decisions.

12 Do you recall that?

13 A I do.

14 Q Has your practice purchased other RF
15 microneedling devices besides the Sylfirm X?

16 A Yes, we have.

17 Q Could you give me some examples of those?

18 A We have Electronic -- we have the Sylfirm
19 X, we have the Scarlet, we have the Reverso, there
20 is one out of Canada now called Darwin.

21 Q Do any of those devices use the Na effect?

22 A Every one of them does.

1 Q Can you explain what were the key
2 considerations that led you to purchase those
3 devices for your practice?

4 A Well, you know, I've been doing this long
5 enough that I had experience with devices that
6 were bipolar, radiofrequency devices where with
7 the zone of coagulation was not just around the
8 tip but extended from tip to tip. You know, Danny
9 Beluvi did a lot of work in this. We had done
10 some work with him way back when.

11 In those cases, the energy arced from one
12 pole to the other, in these bipolar systems, we
13 had -- we had enormous pain and so Sylfirm X is
14 great because it has continuous wave and pulsed
15 wave but what has revolutionized technology is the
16 Na principle, the ability to keep that energy
17 around tips and not extending from tip to tip and
18 I would argue EndyMed has that, Intensif has that,
19 they all do now.

20 Q I wanted to -- one more question on the
21 purchasing decisions.

22 Were the main drivers of your decision to

1 purchase the Sylfirm X the same or different than
2 the drivers of your decision to purchase the other
3 microneedling devices that use the Na effect?

4 A So the purchasing decisions we have many
5 offices so really based on the starting .2 things,
6 one is again the Na principle, and pretty much
7 everything has that now and that is energy stays
8 around the tips whether it's continuous wave or
9 pulsed wave, becomes secondary but the first thing
10 is the safety of the Na principle and the second
11 thing is the ability to treat superficially or
12 deep depending where on the body. That's what it
13 starts with.

14 Then it gets down to things like price,
15 it's always going to be an issue, we have a large
16 practice, and yeah the continuous wave pulsed wave
17 that's nice but that's not -- that did not go into
18 the decision. I like this Darwin thing I
19 mentioned because it has the same -- he talks
20 about ultrasound, Darwin has this suction thing so
21 you kind of pull the skin up a little bit, it
22 takes away some of the discomfort also. They are

1 great marketing tools but they don't get to the
2 core. The core is Na and the core is depth.

3 Q Thank you, Dr. Goldberg. I just wanted go
4 back to the last exhibit that we were discussing
5 which was Exhibit 2048 but I want to show you a
6 color version because I think it's going to be
7 easier to see so I'm going to upload to the chat a
8 color version of the same exhibit we were just
9 looking at. And I will share it here so that you
10 can see it.

11 MR. SANDERS: We'll mark this Exhibit 18.

12 (A certain document was marked Goldberg
13 Deposition Exhibit 18 for identification,
14 as of 04/18/2025.)

15 BY MR. SANDERS:

16 Q Let me put up the document. Dr. Goldberg,
17 this is my first time sharing so let me know if
18 you can see the document okay?

19 A Yes, again, like I said I know Monica
20 Elman, this is her study.

21 Q Excellent. I just wanted to ask you about
22 one page of the document, right below do you

1 recall you were asked about the bottom of Page 2
2 of the document?

3 A I've been asked a lot of questions.
4 Remind me.

5 Q Yeah, sure. So you were asked about I
6 believe I'll highlight the sentence here if I can,
7 you were asked about this sentence here about the
8 needle insertion into the skin a few moments ago.

9 Do you recall that?

10 A Yes.

11 Q I just want to show you what's right below
12 the paragraph and do you see Dr. Goldberg
13 Figure 1.

14 A Yes.

15 Q Can you explain what's shown in Figure 1
16 and tell us how if at all it relates to the Na
17 effect?

18 A So look at those needles, okay, and again,
19 you know, some of these tips have more needles,
20 less needles but they are all basically needle
21 driven. There are spaces between the needles.
22 You see to the right what happens when it's

1 delivered to the skin. You get that heat around
2 the skin, you know, how it's delivered, whether
3 it's through some sort of pro antibiotic I can
4 mechanism or not but they're all delivered that
5 way to the skin and if you took EndyMed and took
6 that name off there and, again, I didn't know how
7 many tips were there, I would not be able to
8 distinguish this from Sylfirm X -- and on and on
9 and on. They all have those needles spaces
10 between them energy around those needles, the
11 coagulation we talked about and not coagulation
12 between the needles.

13 MR. SANDERS: Thank you, Dr. Goldberg. No
14 further questions.

15 MR. AUTERI: I have another question on
16 this document. Can we leave it up on this page.

17 FURTHER EXAMINATION

18 BY MR. AUTERI:

19 Q Dr. Goldberg, what is the minimum heat
20 needed to cause skin to coagulation?

21 A So generally what you need to do is you
22 need to get around 70 to 80 degrees or athletes 60

1 to 80, if you get to a hundred degrees, you
2 vaporize, you don't want to, if you get to
3 50 degrees -- so somewhere in that 60 to
4 80 degrees centigrade.

5 Q Is there any way I can zoom in on this?

6 MR. SANDERS: I'm happy to zoom in for
7 you, Counsel.

8 MR. AUTERI: Yes, can you zoom in and then
9 go a little bit to the right.

10 BY MR. AUTERI:

11 Q Do you see the color spectrum to the
12 right, Dr. Goldberg?

13 A I do.

14 Q That is representing the heat that is
15 being shown based on the colors?

16 A Yes, it is.

17 Q And the highest temperature would be
18 40 degrees Celsius; is that correct?

19 A Again, I don't know what animal model this
20 is being done in. In human skin that's what we
21 need to do. If you are just getting up to
22 40 degrees or 30 degrees in human skin, you're not

1 doing anything.

2 Q Right so this is not showing coagulation
3 around but not between?

4 A No, what it's showing is the heat around
5 the needles.

6 Q Right but the '836 patent specifically
7 claims having coagulation around but not
8 between --

9 A If Intensif just got to -- I know it
10 doesn't but if it only got to 30 degrees I can
11 tell you that machine would never work, it would
12 never sell because it wouldn't do what we need it
13 to do.

14 Q Right, but based on this image which shows
15 the highest heat reach is 40 degrees this does not
16 show that coagulation as being made in this image,
17 correct?

18 A Again, heat maps don't tell you
19 coagulation, what this shows you is the heat
20 around the needles, not extending from needle to
21 needle.

22 Q Right so it's showing the heat but not

1 necessarily showing coagulation; is that correct?

2 A Well, it says there if you look at it
3 right needle allows effective coagulation so it
4 does say that.

5 Q Right you agree that this shows the
6 highest temperature is 40 degrees?

7 A Well, but you don't get coagulation to 40
8 degrees.

9 Q Do you know that this if this is even
10 human tissue --

11 A I don't have the article in front of me.
12 You're showing me one piece of it so I don't know
13 that. I assume that is Monica he will man's study
14 presumably it is in humans but I don't know if
15 this particular scan is taken in humans, I have no
16 idea and all bets are off if it's an animal
17 model?

18 Q Is it possible it could be Agar?

19 A Agar is basically gel, it could be
20 anything. You asked me -- you seem to imply that
21 this is inducing 30 degrees centigrade and I said
22 you need 60 to 80 degrees send great to induce

1 coagulation which is through, and the, therefore,
2 the implication was this is not doing that. This
3 is a diagram. This doesn't tell me anything.

4 MR. AUTERI: I think that's it for my
5 questions unless Mr. Sanders has re-redirect.

6 MR. SANDERS: Thank you, Dr. Goldberg.

7 THE WITNESS: I think we can go off the
8 record.

9 (Deposition concluded at 12:27 p.m. CST.)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2
3 I, Theresa A. Vorkapic, Certified
4 Reporter and Notary Public within and for the
5 State of Illinois do hereby certify:

6
7 That DR. DAVID J. GOLDBERG, the witness
8 whose deposition is hereinbefore set forth,

9
10 Was duly sworn by me before the
11 commencement of such deposition and that such
12 deposition was taken before me and is a true
13 record of the testimony given by such witness.

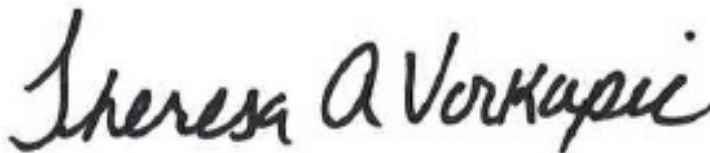
14
15 I further certify that the adverse
16 party, patent owner, was represented by counsel at
17 the deposition.

18
19 I further certify that the deposition of
20 DR. DAVID J. GOLDBERG, occurred virtually on
21 Friday, April 18, 2025, commencing at 8:54 a.m.
22 a.m. to 12:27 p.m. CST.

1 I further certify the inspection,
2 reading and signing of said deposition was
3 waived on the record by agreement of all parties.
4

5 I further certify that I am not related
6 to any of the parties to this action by blood
7 or marriage, I am not employed by or an attorney
8 to any of the parties to this action, and that I
9 am in no way interested, financially or otherwise,
10 in the outcome of this matter.
11

12 IN WITNESS WHEREOF, I have hereunto set
13 my hand this 22nd day of April, 2025.
14

15 
16 _____

17 Theresa A. Vorkapic

18 My commission expires November 6, 2027.

19 NOTARY PUBLIC IN AND FOR THE
20 ILLINOIS
21
22

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