

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLAYBACK PHARMA LLC,
Petitioner,

v.

EYE THERAPIES, LLC,
Patent Owner.

Case IPR2022-00142
Patent 8,293,742

DECLARATION OF JOHN C. JAROSZ

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I, John C. Jarosz, hereby declare:

I. INTRODUCTION

A. Assignment

1. I have been retained as an expert on behalf of Eye Therapies, LLC (“Eye Therapies” or “Patent Owner”) as well as Bausch & Lomb, Inc. and Bausch & Lomb Ireland Limited (collectively, “Bausch & Lomb”) in connection with the above-captioned *inter partes* review (“IPR”) proceeding before the U.S. Patent and Trademark Office Patent Trial and Appeal Board (“PTAB”).
2. I understand that this IPR proceeding concerns claims 1–6 of U.S. Patent No. 8,293,742 B2 (“the ’742 patent”). (EX-1001.) I understand that the Lumify (brimonidine tartrate ophthalmic solution, 0.025%) product that Bausch & Lomb markets and sells in the U.S is an embodiment of certain claims of the ’742 patent. (EX-2020, ¶¶266, 301, 311; Patent Owner’s Preliminary Response (IPR2022-00142) at 31-32.)
3. I understand that the PTAB has instituted a trial in response to Slayback Pharma LLC’s (“Slayback”) petition. I have been asked by counsel for Patent Owner and Bausch & Lomb to assess whether Lumify has been a marketplace success, and whether such success is attributable to the inventions claimed in the ’742 patent. According to Dr. Robert J. Noecker (“Dr. Noecker”), whose opinions I have reviewed and considered, the use of Lumify is covered by certain of the claims of the ’742 patent. Further, I understand that the ’742

patent is listed in the U.S. Food and Drug Administration's ("FDA's") Orange Book in connection with Lumify. (EX-2079.)

4. This declaration summarizes the opinions that I have formed to date. I may modify or supplement my opinions, if necessary and allowed, based on my review and analysis of information provided to me subsequent to the filing of this declaration.

B. Qualifications

5. I am a Managing Principal of Analysis Group, Inc. ("AG") and Director of the firm's Washington, DC office. AG is an economic, financial, strategy, and health care consulting firm with offices in Beijing, China; Boston, MA; Brussels, Belgium; Chicago, IL; Dallas, TX; Denver, CO; London, UK; Los Angeles, CA; Menlo Park, CA; Montreal, Quebec; New York, NY; Paris, France; San Francisco, CA; and Washington, DC. AG provides research and analysis in a variety of business, litigation, and regulatory settings.
6. I received my B.A. in Economics and Organizational Communications, *summa cum laude*, from Creighton University in Omaha, NE. Thereafter, I was a fellowship student in the Ph.D. program in Economics at Washington University in St. Louis, MO. I completed most of the degree requirements but left before finishing my Ph.D. degree. I ultimately was awarded an M.A. in Economics. I worked for some period after that and then enrolled in law

school at the University of Wisconsin in Madison, WI. From there, I received a J.D., focusing much of my study on courses examining the intersection between law and economics. I am a member of the State Bar of Wisconsin but have been on inactive status for the past 37 years.

7. My resume, which describes all my testimony, publications, and presentations, is attached as Appendix 1. To briefly summarize, I have spent my entire professional career as a practicing economist. Almost all of my work has involved evaluating the economics of intellectual property (“IP”) protection. The bulk of that work has dealt with issues of damages estimation, commercial success, FRAND compliance, injunctive relief, and antitrust violations. I have testified at trial or arbitration in over 100 such matters.
8. Among other things, I have published articles in academic and professional journals, edited a treatise on IP licensing, given presentations and speeches to a wide variety of groups, and taught classes at various graduate schools.
9. Though our firm and I have been engaged in a wide range of industries, the largest amount of my work has been in pharmaceutical settings, where I have been involved in scores of matters. Those matters often deal with patient, physician, and payer decision-making, as well as supplier actions and reactions to competitive conditions.

C. Compensation

10. My firm bills Finnegan, Henderson, Farabow, Garrett & Dunner, LLP on a time-and-materials basis for my work and that of my colleagues. My customary and usual hourly billing rate for the time spent consulting, which includes my study of pertinent issues and materials, and which applies in this matter, and any testimony I may give, is \$900. I also have directed the efforts of other staff members of AG, whose customary and usual hourly billing rates range from \$375 to \$630. Our reasonable expenses are being compensated, and our compensation is not, in any way, dependent on the outcome of this proceeding or on the substance of my opinion.

D. Evidence Considered

11. In undertaking my study, I have considered information from a variety of sources, each of which is a type that is reasonably relied upon by experts in my field. Among other things, I have considered the declaration of Mr. John Ferris (“Mr. Ferris”), Senior Vice President of Global Consumer at Bausch + Lomb Corporation, and the declaration of Dr. Robert J. Noecker. In connection with the opinions and conclusions contained in this declaration, I also considered pharmaceutical sales data and marketing materials provided by Bausch & Lomb, as well as academic articles, medical websites, and other publicly-available materials. The materials that I considered are identified in

Appendix 2.

12. Moreover, I have relied upon my professional judgment and expertise, gathered and developed in many years of estimating damages, valuing/evaluating technology, and assessing commercial success and injunctive relief in intellectual property contexts.

E. Summary of Opinions

13. Based upon my review and analysis of the evidence that I have received to date, it is my opinion that the commercial embodiment of certain claims of the '742 patent, Lumify, has been a marketplace success. Moreover, it is my opinion that this success, in large part, has been driven by the benefits attributable to the inventions claimed in the '742 patent. As a result, the inventions claimed in the '742 patent have been a commercial success.

II. BACKGROUND

A. Parties

1. Petitioner

14. Founded in 2011, Petitioner Slayback is a pharmaceutical company based in Princeton, New Jersey with operations in the U.S., India, and Europe. (EX-2140.) Slayback sells complex generic and specialty pharmaceutical products, including medications for genetic disorders, infectious diseases, and contraception. (EX-2126; EX-2127; EX-2128; EX-2129; EX-2142.)

2. Patent Owner

15. Established in 2010 by Lee Nordan, Robert Rowlett, and Gerald Horn, Patent Owner Eye Therapies is a pharmaceutical company headquartered in Dana Point, California. (EX-2122.) Eye Therapies partnered with Ora, Inc., a private research company, to develop an eye redness reliever. (EX-2124.)
16. In 2013, Eye Therapies granted Bausch & Lomb Ireland Limited, an affiliate of Bausch & Lomb, Inc., an exclusive global license to, among other things, the '742 patent and the application that later issued as the '425 patent (the "Lumify Patents"). (EX-2118; EX-2124.)
17. Bausch & Lomb began as an optical goods store located in New York in 1853. (EX-2083.) Since then, Bausch & Lomb and its subsidiaries have expanded to over 30 commercial locations and over 10 manufacturing locations across North America, South America, Europe, Asia and Oceania, and Africa. (EX-2082.) In May 2013, Valeant Pharmaceuticals International, Inc. acquired Bausch + Lomb Holdings Incorporated and subsequently changed the name to Bausch Health Companies Inc. ("Bausch Health").¹ (EX-2105; EX-2106.)

¹ Bausch Health's portfolio comprises over 400 products, including contact lenses, lens and eye care products, ophthalmic pharmaceuticals, and ophthalmic surgical devices and instruments. (EX-2083.)

In May 2022, Bausch Health separated its eye-health business into an independent publicly-traded entity, Bausch + Lomb Corporation. (EX-2067 at 6.)

18. For the fiscal year ending December 31, 2021, Bausch Health reported approximately \$8.43 billion in revenues. (EX-2074 at 3.) For the same time period, Bausch + Lomb Corporation reported \$3.77 billion in revenues, \$2.34 billion of which was associated with the Vision Care/Consumer Health Care segment. (EX-2070 at 5.)

B. Lumify

19. On February 27, 2017, Bausch & Lomb submitted New Drug Application (“NDA”) No. 208144 to the FDA for marketing approval of Lumify (brimonidine tartrate ophthalmic solution, 0.025%). (EX-2065.) Lumify is an over-the-counter (“OTC”) eye drop and is approved for relieving redness of the eye due to minor eye irritations. (EX-2065; EX-2103.) Lumify was launched commercially in the U.S. on May 7, 2018. (EX-2103.)
20. Bausch & Lomb subsequently submitted supplemental NDAs and received five supplemental approvals in February 2019, April 2019, March 2020, September 2020, and November 2021 to market new packaging configurations and fill sizes, as well as make regular updates to labeling. Lumify has been approved to be sold as a single-dose sample (0.4 milliliters),

in a 2.5 milliliter bottle, in a 5.0 milliliter bottle, in a 7.5 milliliter bottle, and in a pack with two 7.5 milliliter bottles. (EX-2060; EX-2061; EX-2062; EX-2063; EX-2064.)

21. The Lumify carton label indicates that adults and children five years and older should apply one drop per affected eye, and it may be applied no more than four times daily (every 6–8 hours). (EX-2108; EX-2151.) Lumify is sold online and in physical stores at major drugstores and big-box retailers, including Walmart, Target, and CVS. (EX-2094; EX-2143; EX-2149.) Lumify is also available for online purchase at Amazon.com. (EX-2081.)

C. Marketplace

22. I am not a medical doctor. Among other things, and importantly, I have considered the declaration of Dr. Noecker to inform my opinions here. I provide the description below as background.

1. Eye Redness

23. I understand from Dr. Noecker that eye redness is a common ophthalmic condition caused by vasodilation, which is an increase in the diameter of blood vessels on the eye and the influx of blood that “congests” those vessels. (EX-2020, ¶45.) As explained by Dr. Noecker, eye redness has several potential causes, including conjunctivitis, foreign body, environmental irritation, and dryness. (EX-2020, ¶¶47-51.) I further understand that a common side effect

of glaucoma medications is eye redness, which can lead to decreased patient adherence with glaucoma therapy. (EX-2020, ¶46.) I understand that patients affected by eye redness may experience social stigma, as red eyes are often associated with drinking, drug abuse, or lack of sleep. (EX-2020, ¶46.)

2. Eye Redness Relievers

i. Overview

24. Various active ingredients have been used in redness reliever eye drops for decades, with naphazoline hydrochloride and tetrahydrozoline hydrochloride being common active ingredients used in redness relievers sold today. (EX-2020, ¶58; EX-2066 at 11.) I understand that as of the time of invention here, no brimonidine product had ever been approved by the FDA for the reduction of redness. (EX-2020, ¶¶57, 86-89.)
25. In 2018, Lumify's launch introduced the first and only OTC eye drop developed with low-dose brimonidine tartrate for the treatment of eye redness. (EX-2103.) I understand that brimonidine tartrate was the first new active ingredient to be approved for this indication in decades. (EX-2020, ¶¶56-58, 266, 279.)
26. I understand that redness reliever eye drops with other active ingredients typically are initially effective but become less effective with repeated use over time, a phenomenon known as tachyphylaxis, which can lead to overuse

and ultimately chronic red eye that persists even after discontinuing the eye drops. (EX-2020, ¶¶52, 59-60.) Those redness relievers also are associated with rebound hyperemia, *i.e.*, a rebound of worse redness symptoms upon treatment discontinuation. (EX-2020, ¶¶51-52, 59-60.) I further understand that redness relievers with active ingredients other than naphazoline hydrochloride, tetrahydrozoline hydrochloride, and brimonidine tartrate are available but account for a relatively small share of the marketplace today. (*See, e.g.*, EX-2058; EX-2139.) Below, I provide brief summaries of OTC eye drops that are included in the “redness reliever” category in data from Information Resources, Inc. (“IRI”) that Bausch & Lomb uses in the normal course of business.² (EX-2023, ¶¶27-28, 30; EX-2057; EX-2058.)

ii. Naphazoline Hydrochloride and Tetrahydrozoline Hydrochloride

27. Several companies sell eye redness relievers containing naphazoline hydrochloride or tetrahydrozoline hydrochloride as the active ingredient.

² I understand that the “redness reliever” category in the IRI data obtained by Bausch & Lomb includes products [REDACTED]

[REDACTED]

[REDACTED]

a. Advanced Eye Relief®

28. The Advanced Eye Relief® product line, launched in 2010 by Bausch & Lomb, includes the “Redness” and “Maximum Redness” products, which are marketed as eye redness relievers. (EX-2084; EX-2098.) Advanced Eye Relief®’s active ingredient is naphazoline hydrochloride at concentrations of 0.012 percent and 0.03 percent for the “Redness” and “Maximum Redness” products, respectively. Advanced Eye Relief®’s recommended dosage is one to two drops per affected eye up to four times per day. (EX-2119; EX-2120.)

b. Clear Eyes®

29. The Clear Eyes® product line, launched in 2010 by Prestige Consumer Healthcare, Inc., includes several products marketed as eye redness relievers, such as Clear Eyes® Complete for Sensitive Eyes, Clear Eyes® Redness Relief, and Clear Eyes® Maximum Redness Relief. (EX-2086; EX-2099; EX-2123.) The Clear Eyes® products most commonly use naphazoline hydrochloride at a concentration of 0.012 or 0.03 percent as the active ingredient, with select products instead using 0.05 percent tetrahydrozoline hydrochloride or 0.20 percent phenylephrine hydrochloride. (EX-2087; EX-2088; EX-2089; EX-2091; EX-2092.) Clear Eyes® products’ recommended dosage is one to two drops per affected eye up to four times per day. (EX-2090.)

c. Rohto®

30. The Rohto® product line, launched in the U.S. in 2001 by The Mentholatum Company (a wholly owned subsidiary of Rohto Pharmaceutical Co., Ltd.), includes multiple products marketed as eye redness relievers, including Max Strength Redness Relief Eye Drops, All In One Multi-Symptom Relief Eye Drops, and Cool Relief Eye Drops. (EX-2095; EX-2138; EX-2145.) Rohto®'s active ingredients include naphazoline hydrochloride at concentrations of 0.012 or 0.03 percent, with other products using tetrahydrozoline hydrochloride at a concentration of 0.05 percent. (EX-2133; EX-2134; EX-2135; EX-2136; EX-2137.) Rohto®'s recommended dosage is one to two drops per affected eye up to four times per day. (*See, e.g.*, EX-2135.)

d. Visine®

31. Visine®, from Johnson & Johnson, has been available for decades. (EX-2020, ¶¶266, 281.) The active ingredient in the original formulation of Visine® is tetrahydrozoline hydrochloride at a concentration of 0.05 percent. (EX-2048.) In 1996, the FDA approved an additional formulation of Visine® (then owned by Pfizer Inc.) with a different active ingredient, naphazoline hydrochloride at a concentration of 0.025 percent.³ (EX-2076 at 67; EX-2080.) Visine®'s

³ Formerly known as Visine-A®. (EX-2059.)

recommended dosage is one to two drops per affected eye up to four times per day. (*See, e.g.*, EX-2096.)

e. Private Label

32. I am aware of several private label, generic eye redness relievers that are available in the marketplace. Walgreens and CVS, for instance, both market redness reliever eye drops under their own store brands using either naphazoline hydrochloride at concentrations of 0.012 or 0.03 percent, or tetrahydrozoline hydrochloride at a concentration of 0.05 percent. (EX-2148; EX-2093.) Rite Aid also offers generic versions of the Clear Eyes[®] and Visine[®] eye redness relievers. (EX-2131; EX-2132.)

iii. Brimonidine Tartrate

33. As discussed above, Lumify received FDA approval on December 22, 2017, and became the “first and only over-the-counter (OTC) eye drop developed with low-dose brimonidine tartrate for the treatment of ocular redness.” (EX-2104; EX-2115.)
34. I understand that Slayback filed Abbreviated New Drug Application (“ANDA”) No. 216361 with the FDA seeking approval to engage in the commercial manufacture, use, and sale of its generic brimonidine tartrate ophthalmic solution, 0.025%, in the U.S. before the expiration of the Lumify Patents. (EX-2085.) I further understand that on July 29, 2022, Dr. Reddy’s

Laboratories Ltd. announced that it had entered into a license agreement with Slayback to acquire the rights regarding its private label equivalent of Lumify. (EX-2097; EX-2085.)

35. I understand that brimonidine tartrate was first approved in 1996 for lowering intraocular pressure in patients with open-angle glaucoma or ocular hypertension. (EX-2020, ¶¶66, 81.) I also understand that as of the time of the invention, four brimonidine products had been approved by the FDA, but they were all prescription products and none were approved for the reduction of eye redness. (EX-2020, ¶¶66, 70.)

iv. Others

36. I am aware of additional eye redness relievers, though they all have a small presence in the marketplace. Those eye redness relievers include Similasan[®], which is a non-FDA-approved eye redness reliever using “natural active ingredients,” as well as Colirio[®], Ocusan[®], ProMex Colirio[®], CVP[®], Genomma[®], Medic’s Choice[®], Murine[®], Refresh[®], Solutina[®], and Valet[®]. (See EX-2058; EX-2139.)

D. Patented Technology

37. I understand that Lumify is a commercial embodiment of certain claims of the ’742 patent. (EX-2020, ¶¶266, 301, 311; Patent Owner’s Preliminary Response (IPR2022-00142) at 31-32.) According to Dr. Noecker, whose

opinions I have reviewed and considered, the use of Lumify is covered by certain claims of the '742 patent.

38. The '742 patent, titled "Preferential Vasoconstriction Compositions and Methods of Use," was filed on July 27, 2009, was issued on October 23, 2012, and will expire on August 16, 2030. Claim 1 of the '742 patent recites "[a] method for reducing eye redness consisting essentially of administering brimonidine to a patient having an ocular condition, wherein brimonidine is present at a concentration between about 0.001% weight by volume and about 0.05% weight by volume." (EX-1001, at Claim 1.)
39. Generally, I understand that Claim 1 of the '742 patent, embodied by Lumify, results in a treatment that is well tolerated, safe (*i.e.*, minimal side effects, including lack of rebound redness), and efficacious, and does not result in tachyphylaxis even after repeated use over time. (EX-2020, ¶¶93, 311.)
40. As discussed above, the active ingredient in Lumify is brimonidine tartrate at a concentration of 0.025 percent. Lumify is indicated for relief of redness of the eye due to minor eye irritations. (EX-2065.)

III. COMMERCIAL SUCCESS ANALYSIS

A. Framework

1. Obviousness

41. I understand that the purpose of a commercial success analysis in a case where the validity of a patent has been challenged is to assist the fact-finder in

determining whether the patented subject matter would have been obvious to a person of ordinary skill at the time of invention. Evidence of the success of products that embody the patented technology—where that success is, in part, attributable to the patented technology—suggests that the patented technology was not obvious to industry participants during the relevant time period. If it had been obvious, one would have expected economically rational sellers to have adopted the patented technology before patenting occurred.

42. In theory, if a product that is expected to be commercially successful was obvious to invent, then other competitors likely would have already developed it. In that case, the market for subsequent entrants to achieve commercial success would be depleted. The potential for achieving commercial success is thought to drive inventors to formulate solutions to existing problems to satisfy marketplace demands. If an inventor develops a product that is commercially successful, presumably others recognized the product's potential for commercial success, attempted to develop a solution to the same problem, and failed. (EX-2049 at 2077-78.)
43. I also understand that many of the facts underlying a commercial success analysis may be relevant to determining whether the patented inventions satisfy a long-felt but unmet need.

2. Elements of Commercial Success

44. I understand that, to establish commercial success, the patentee must show that there is marketplace success of the embodying product or method, and that success is due, in part, to the inventions disclosed and claimed in the patent(s).
45. I further understand that the test for commercial success does not require that the patented features of the invention(s) be the only reason for a product's success. Instead, the patented features must be motivating (or important) factors. Accordingly, the existence of other demand drivers does not negate a showing of commercial success. From an economic perspective, this result makes sense because demand for a product, pharmaceutical or not, is always driven by a host of factors, not just one. (EX-2047 at 48.)
46. Further, the embodying product need not be the only or the most successful product in a particular marketplace. If that were the case, commercial success would rarely be found.
47. In light of this guidance, I performed a two-part analysis to assess the commercial success of the inventions described in the claims of the '742 patent.
48. First, I examined whether Lumify has been successful in the marketplace. For this, I considered the actions of marketplace participants as well as the absolute

and relative performance of Lumify.

49. Second, I evaluated the nexus between the success of Lumify and the benefits made possible by the patented inventions. For this assessment, I identified the primary benefits of the claimed inventions, and examined the extent to which these benefits contributed to the marketplace success of Lumify.

B. Analysis

1. Marketplace Success

i. Revealed Preference

50. In assessing whether a product has been successful, a useful starting point is considering whether the economic decisions and behavior of the participants in the business are consistent with a belief that the product will be or has been a marketplace success.
51. The foundation of such an inquiry is the fact that a decision to commit, and continue to commit, resources to the development and sale of any product is an economic/financial choice. No party is compelled to pursue or continue such activities, and all parties involved have the option to deploy or reallocate their resources to other, presumably higher-value, endeavors at any time, if such endeavors exist. In fact, economic theory regarding rational economic decision-making and corporate profit-maximizing behavior suggests that responsible economic decision-makers should allocate resources to activities that are expected to generate the highest net return (*i.e.*, benefits minus costs)

that are available, given the opportunities and constraints facing the decision-makers.⁴

52. The decisions and behavior of Slayback, Eye Therapies, and Bausch & Lomb strongly suggest that these companies regarded and continue to regard Lumify as a marketplace success.

a. Petitioner

53. As reflected in this current proceeding, Slayback is interested in marketing a generic version of Lumify. In fact, Slayback has committed substantial resources to pursuing this opportunity, including not only the cost of submitting an ANDA and developing its generic product, but also the cost of litigating to secure the ability to introduce a generic version of Lumify. (EX-2085; EX-2097.)
54. The potential pay-off to Slayback from introducing a generic version of Lumify derives from the fact that a generic manufacturer likely can expect to capture a substantial portion of Lumify sales at a discount to the prices charged for Lumify, and still generate substantial profits.

⁴ The economics literature regards firms as profit-maximizing entities that make decisions to maximize profits subject to constraints. (*See, e.g.*, EX-2046 at 35.)

55. From an economic perspective, the fact that Slayback has demonstrated its desire and intent to offer a generic version of Lumify is very strong, though not dispositive, evidence that it believes Lumify to be a marketplace success.
56. It would make little business sense for Slayback to invest substantial resources into the development of a generic version of Lumify, as well as pursue regulatory approval and participate in this proceeding, unless it believed that the underlying product has been, and will continue to be, a marketplace success. If, in fact, Slayback did not consider Lumify to be a successful product, one would not expect it to spend the time, money, and effort required to introduce a generic version of the product into a marketplace with numerous well-established competitors, many of which have been marketed for decades. (*See, e.g.*, EX-2077; EX-2078; EX-2080.)
57. Slayback's expected returns on generic Lumify must be higher than alternative investment opportunities in order for this decision to be economically rational. Slayback's portfolio includes products across a range of therapeutic areas and, according to Slayback, it has a "record of numerous sole first-to-file ANDAs, 505(b)(2)s and complex generic filings, approvals and launches" (EX-2140; EX-2141.) Slayback's decision to pursue a generic version of Lumify makes economic sense only if it believes that this product would yield higher returns relative to alternative options.

b. Patent Owner and Licensee

58. Eye Therapies and Bausch & Lomb have made and continue to make significant investments to obtain, develop, and commercialize Lumify. In 2010, Eye Therapies submitted an Investigational New Drug Application (“IND”) to the FDA and began planning clinical trials for a low-dose brimonidine tartrate product to assess its safety and efficacy in the reduction of eye redness. After Bausch & Lomb and Eye Therapies entered into a license agreement in 2013, the IND was transferred to Bausch & Lomb, which sponsored further research. (EX-2066 at 8-9.)
59. Bausch & Lomb’s decision to license in Lumify from Eye Therapies in 2013 indicates that Bausch & Lomb expected Lumify to become a successful product and worthwhile investment. Under Eye Therapies’ and Bausch & Lomb’s licensing agreement, Bausch & Lomb has paid Eye Therapies nearly [REDACTED] to date. (EX-2023, ¶21.) From an economic perspective, Bausch & Lomb would not have entered into such an agreement had it not expected Lumify’s future profits to exceed its payments under the license agreement and the costs of sponsoring Lumify’s continued research and development (“R&D”), including the cost of the clinical trials necessary to gain FDA approval.
60. To gain FDA approval, Bausch & Lomb and Eye Therapies conducted “[s]ix

clinical studies [...] to evaluate the safety and effectiveness of brimonidine tartrate ophthalmic solution, 0.025% in relieving ocular redness. These included: one dose-ranging safety and efficacy (phase 2) study; two safety and efficacy studies (one phase 2 and one phase 3 study); one intraocular pressure lowering study; one safety (phase 3) study; and one pharmacokinetics (phase 1) study,” comprising over 700 subjects total. (EX-2052 at slide 8; EX-2066 at 12.) Bausch & Lomb also sponsored a label interpretation study (EX-2066 at 2, 33.)

61. Following Lumify’s initial FDA approval in 2017, Bausch & Lomb continued to invest in Lumify’s product development. Bausch & Lomb subsequently submitted supplemental NDAs and received five supplemental approvals in February 2019, April 2019, March 2020, September 2020, and November 2021 to market new packaging configurations and fill sizes, as well as update product labels. (EX-2060; EX-2061; EX-2062; EX-2063; EX-2064.) Line extensions for Lumify are also in development, with Bausch & Lomb stating in early 2022 that Phase 3 clinical trials were scheduled to begin in the second half of 2022. (EX-2068 at slide 24.)
62. According to Mr. Ferris, Bausch & Lomb has incurred [REDACTED] to date in R&D expenditures related to Lumify. (EX-2023, ¶21.)
63. In addition to investing in R&D, Bausch & Lomb has spent [REDACTED]

per year on sales and marketing for Lumify between 2018 and 2022. (EX-2023, ¶21.) Bausch & Lomb is unlikely to have continued to spend [REDACTED] per year on sales and marketing if they did not believe that the drug was and would continue to be a success.

64. Additionally, Eye Therapies and Bausch & Lomb will devote substantial resources to defending Lumify in this proceeding and in the related district court litigation.
65. The decisions that have been made by Eye Therapies and Bausch & Lomb are consistent with a conclusion that Lumify has been, and will continue to be, viewed, by well-informed parties, as a marketplace success. If that were not the case, it would not be economically reasonable to continue investing in Lumify.

ii. Importance to Bausch & Lomb

66. Lumify is an important contributor to Bausch & Lomb's product portfolio. (EX-2023, ¶¶19-20.) In its 2017 and 2018 Annual Reports, Bausch Health (Bausch & Lomb's parent company) identified Lumify as one of its "Significant Seven" products, "with the potential to be important catalysts for our future," out of over 250 projects. (EX-2071 at 3; EX-2072 at 52.) Bausch Health noted that it "believe[s] the prospects for this group of projects to be substantial and anticipate[s] devoting significant marketing efforts toward

their promotion.” (EX-2072 at 52.) In a presentation of Q1 2019 financial results, Bausch Health described Lumify’s launch as a “[c]ontinued success[...], exceeding expectations.” (EX-2073 at slides 16-17.)

67. In 2021, Lumify accounted for approximately 7.4 percent of Bausch & Lomb’s Global Consumer segment revenues of \$1.45 billion⁵ and ranked as Bausch & Lomb’s ninth best-selling product/franchise. (EX-2075 at slide 54.) Bausch Health identified Lumify as one of two growth drivers for Bausch & Lomb’s Global Consumer segment, describing it as a “leading brand” and “key franchise” for the company. (EX-2075 at slides 8, 21, 30.)

iii. Marketplace Performance

68. Lumify has been successful in the marketplace, enjoying both absolute and relative success. Its immediate and continuing success, moreover, likely indicates that it satisfied a long-felt but unmet need in the eye redness reliever marketplace.
69. To examine Lumify’s marketplace performance, I considered two sets of IRI data for the “redness reliever” category that Bausch & Lomb uses in the normal course of business: IRI Point-of-Sale (“POS”) and IRI Panel data. I

⁵ Calculated as 7.4 percent = \$108,000,000 / \$1,450,000,000. (EX-2075 at slides 46, 54.)

understand that the IRI POS data include U.S. sales from retail stores across multiple channels (*e.g.*, food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (*i.e.*, purchases made online and shipped to the customer). (EX-2023, ¶32.) I understand that as compared with the IRI POS data, the IRI Panel data are more inclusive and intend to capture 100 percent of total consumption across both brick-and-mortar and online channels, but lack some of the detail that is available in the POS data. (EX-2023, ¶¶30-31.) I further understand that to try to capture 100 percent of total consumption, the IRI Panel data are based on projections from a national consumer panel, while the IRI POS data are based on point-of-sale data from retail stores. (EX-2023, ¶30.)

70. The IRI POS data obtained by Bausch contain sales information from Q1 2017 through Q2 2022 for an extensive set of eye redness relievers, including

[REDACTED]

[REDACTED] while the IRI Panel data contain sales information for a shorter time period (Q1 2018 through Q1 2022) and a smaller set of products [REDACTED]

[REDACTED]

71. To examine Lumify's marketplace performance, I primarily analyzed the IRI POS data, which contain actual sales instead of projected sales, cover a longer

time period, and provide additional granularity on smaller marketplace participants, relative to the IRI Panel data. This choice also leads to a more conservative analysis, as Lumify's sales revenues and overall marketplace share are [REDACTED] in the IRI POS data than in the IRI Panel data. (Appendix 9; Appendix 25; Appendix 27.)

a. Absolute Performance

72. According to IRI POS data produced by Bausch & Lomb in this matter, Lumify's revenues, units, volume, and prices since its May 2018 launch show that it has been a success in the marketplace.⁶ As described above, the IRI POS dataset captures a subset of Lumify sales. Therefore, to the extent that additional online and Costco sales occurred that are not captured in the IRI POS dataset, the analysis below may understate Lumify sales. Nonetheless, as described below, U.S. sales of Lumify have grown substantially and steadily since its launch in May 2018.

1. Revenues

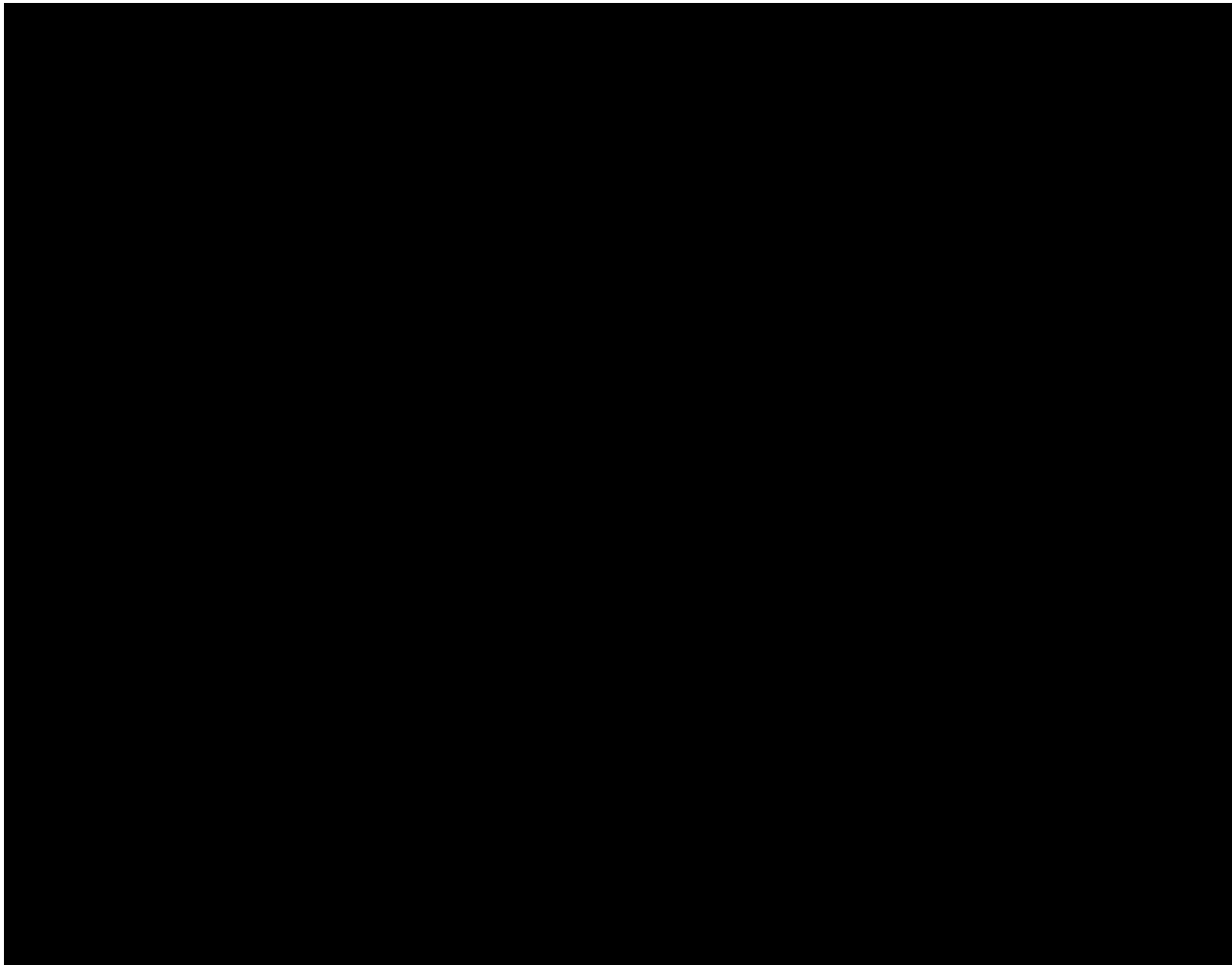
73. Lumify received FDA approval in December 2017 and launched in the U.S.

⁶ I understand that the revenues and prices in the IRI POS data generally reflect what consumers pay at the register (*i.e.*, net of any promotions, discounts, and/or coupons applied at the register). (EX-2023, ¶32.)

in May 2018. Figure 1, below, illustrates Lumify revenues from Q2 2018 to Q2 2022. (Appendix 4.) As captured in the IRI POS data underlying Figure 1, from Q2 to Q4 of 2018, Lumify generated revenues of [REDACTED]. (Appendix 3.) Lumify's annual revenues increased to [REDACTED] in 2019, [REDACTED] in 2020,⁷ and [REDACTED] in 2021.⁸ (Appendix 3.) From Q2 2018 to Q2 2022, Lumify generated total revenues of [REDACTED]. (Appendix 3.)

⁷ The increase in revenues in 2020 is notable given the negative impact of the COVID-19 pandemic on sales in 2020, as noted in Bausch & Lomb's financial filings. (EX-2069 at 117.)

⁸ In its second amended S-1 financial filing, Bausch + Lomb Corporation noted that Lumify generated \$108 million in net revenues in 2021, which is similar in magnitude to the sales revenues reported in the IRI POS dataset as mentioned above. (EX-2070 at 160.)



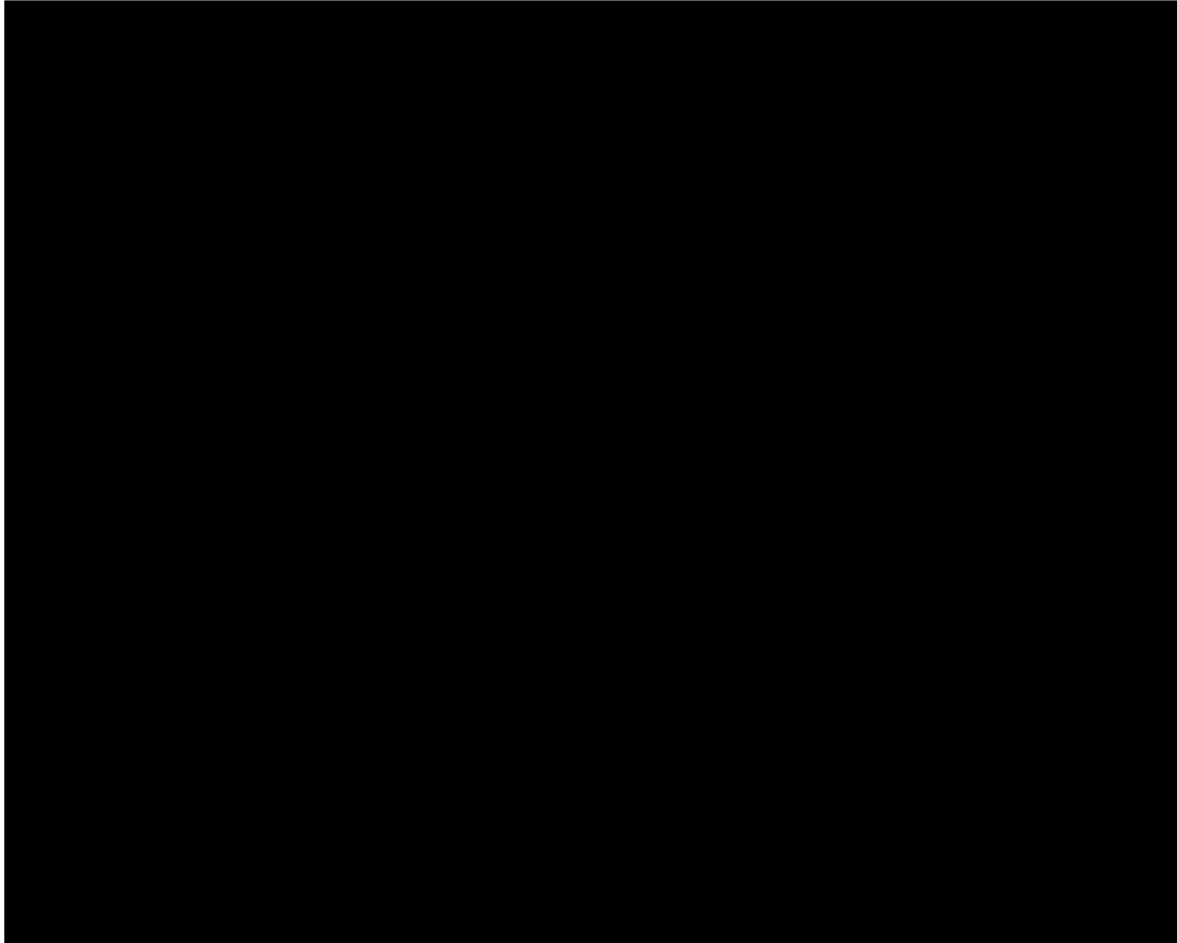
74. Lumify's quarterly revenues increased from [REDACTED] in Q3 2018, the first full quarter after launch, to [REDACTED] in Q2 2022, the last full quarter of data available. (Appendix 3.) This represents a compound annual growth rate ("CAGR") of [REDACTED]. (Appendix 3.)

2. Units

75. Figure 2, below, illustrates Lumify unit sales from Q2 2018 to Q2 2022.⁹ (Appendix 5.) As captured in the IRI POS data underlying Figure 2, from Q2 to Q4 of 2018, Lumify sold [REDACTED]. (Appendix 3.) Its annual units sold increased to [REDACTED] in 2019, [REDACTED] in 2020, and [REDACTED] in 2021.¹⁰ (Appendix 3.) From Q2 2018 to Q2 2022, Lumify sold a total of [REDACTED] units. (Appendix 3.)

⁹ I understand that units in the IRI POS data refer to packages. One package with two bottles would be recorded as one unit. (EX-2023, ¶32.)

¹⁰ The increase in 2020 is notable given the negative impact of the COVID-19 pandemic on sales in 2020, as noted in Bausch & Lomb's financial filings. (EX-2069 at 117.)



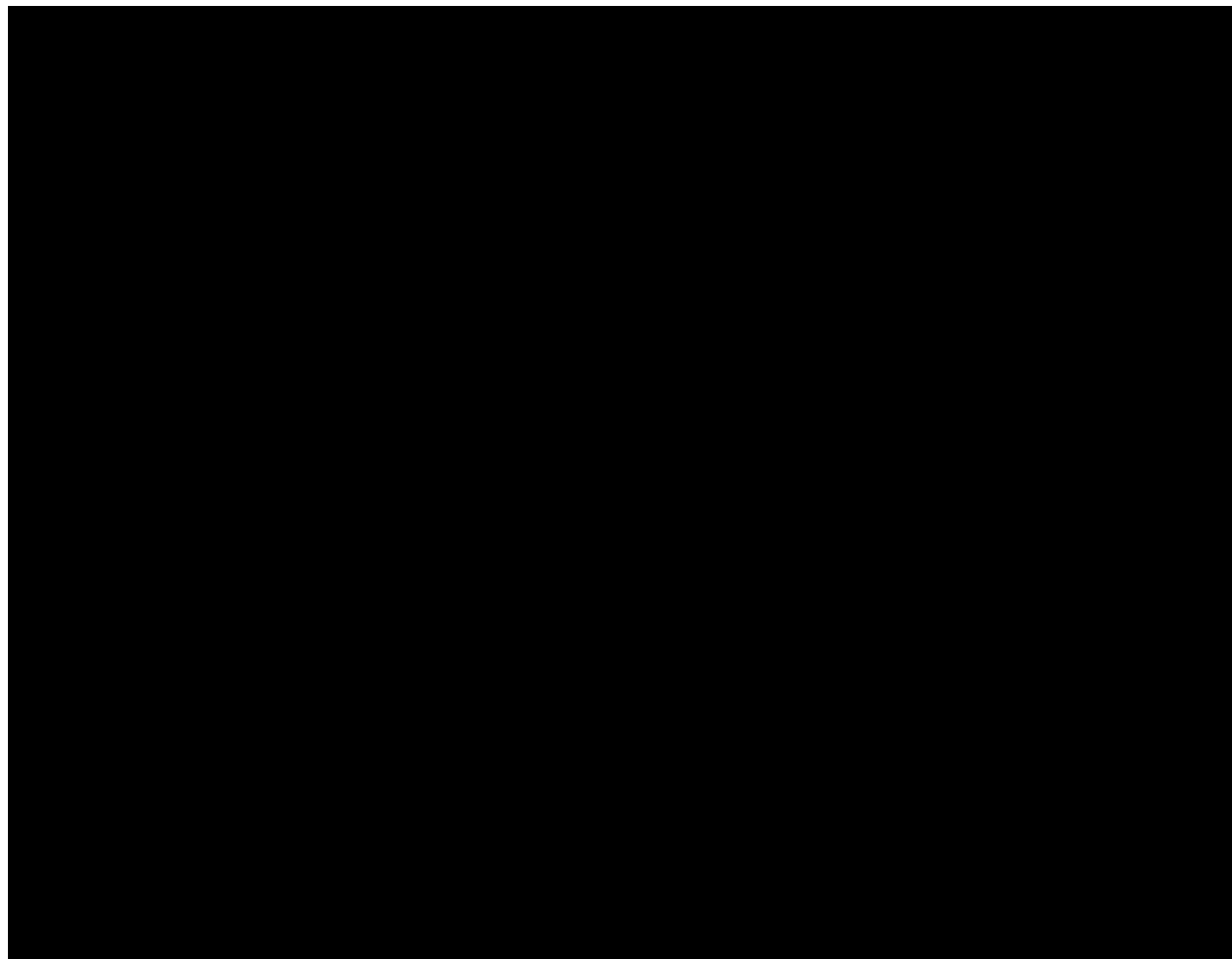
76. Lumify's quarterly unit sales increased from [REDACTED] units in Q3 2018, the first full quarter after launch, to [REDACTED] units in Q2 2022, the last full quarter of data available. This represents a CAGR of [REDACTED]. (Appendix 3.)

3. Volume

77. Figure 3, below, illustrates Lumify volume sales from Q2 2018 to Q2 2022. (Appendix 7.) As captured in the IRI POS data underlying Figure 3, from Q2 to Q4 2018, Lumify sold [REDACTED] fluid ounces of product. (Appendix 3.)

Its annual volume sold increased to [REDACTED] fluid ounces in 2019, [REDACTED] fluid ounces in 2020, and [REDACTED] fluid ounces in 2021.¹¹ (Appendix 3.) From Q2 2018 to Q2 2022, Lumify sold a total of [REDACTED] fluid ounces of product. (Appendix 3.)

¹¹ The increase in 2020 is notable given the negative impact of the COVID-19 pandemic on sales in 2020, as noted in Bausch & Lomb's financial filings. (EX-2069 at 117.)

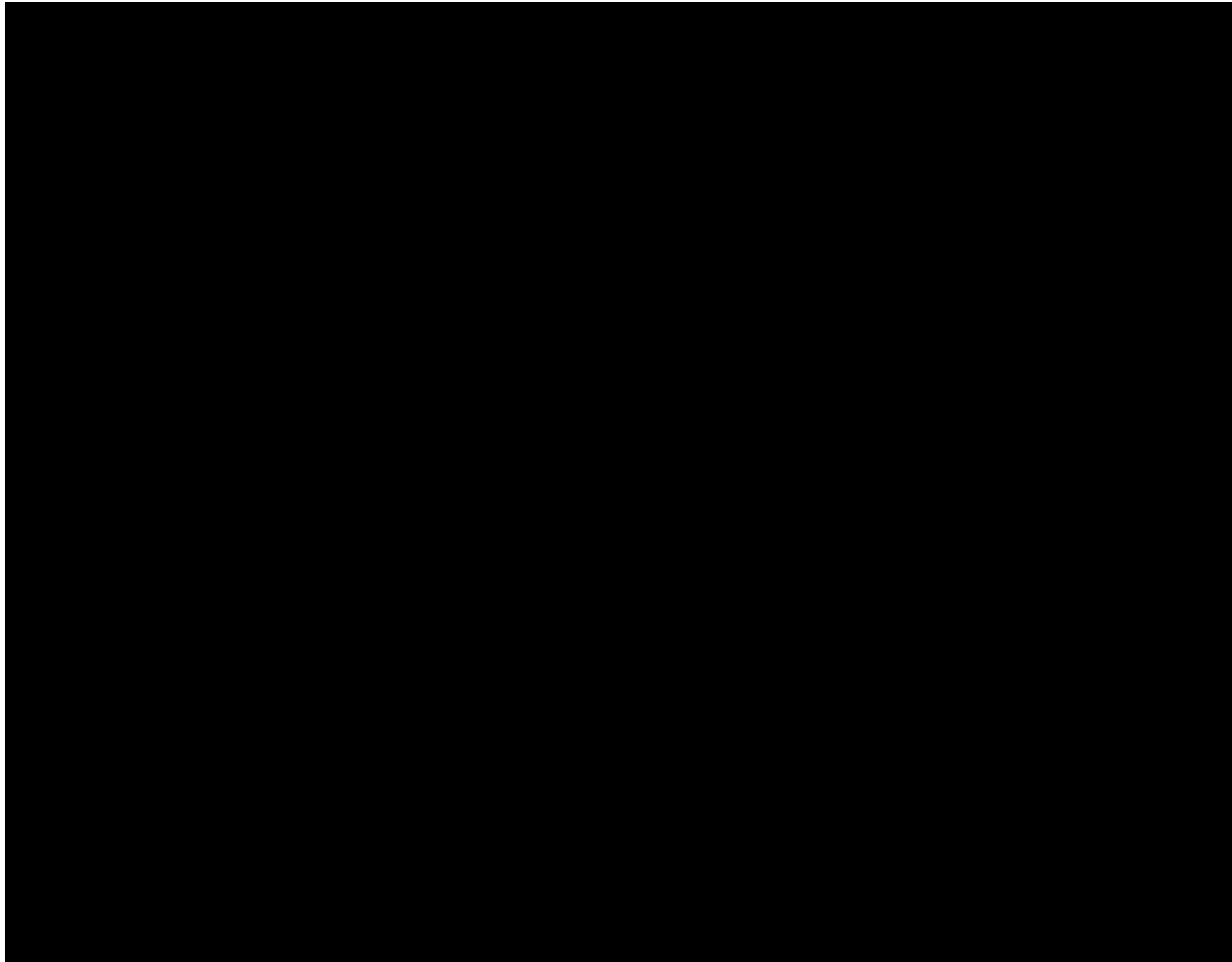


78. Lumify's quarterly volume sales increased from nearly [REDACTED] fluid ounces in Q3 2018, the first full quarter after launch, to more than [REDACTED] fluid ounces in Q2 2022, the last full quarter of data available. This represents a CAGR of [REDACTED]. (Appendix 3.)

4. Prices

79. Figure 4, below, illustrates Lumify's unit average sales price ("unit ASP"), calculated as revenues divided by units, from Q2 2018 to Q2 2022. (Appendix 6.) As captured in the IRI POS data underlying Figure 4, Lumify's unit ASP

was around [REDACTED] in Q2 2018, quickly increased to [REDACTED] by Q4 2018, and then gradually increased to around [REDACTED] by Q2 2022, the last full quarter of data available. (Appendix 3.)



80. Lumify's unit ASP generally has ranged from [REDACTED]. (Appendix 3.) Lumify's prices also can be calculated in terms of price per fluid ounce. As shown in Appendix 3 and Appendix 8, Lumify's price per fluid ounce generally has ranged from [REDACTED].
81. Overall, while the price of Lumify has changed somewhat over time, it has

not experienced drastic changes since launch. Moreover, as will be described below in my analysis of relative performance, Lumify's price changes over time are negligible compared with the large differences in price between Lumify and its marketplace competitors.

5. Lumify Projections

82. Pharmaceutical product performance often does not exceed pre-launch expectations. A 2014 McKinsey study found that two thirds of drug launches failed to meet initial sales projections, and 78 percent of the drugs that failed to meet their first-year projections also failed to meet their second-year projections. (EX-2113.)
83. In contrast, Lumify has significantly outperformed expectations. According to Mr. Ferris, Lumify consistently exceeded internal growth expectations since launch even though it was sold at a higher price point than its competitors. (EX-2023, ¶20.) The fact that Lumify has outperformed expectations is consistent with its success in the marketplace.

b. Relative Performance

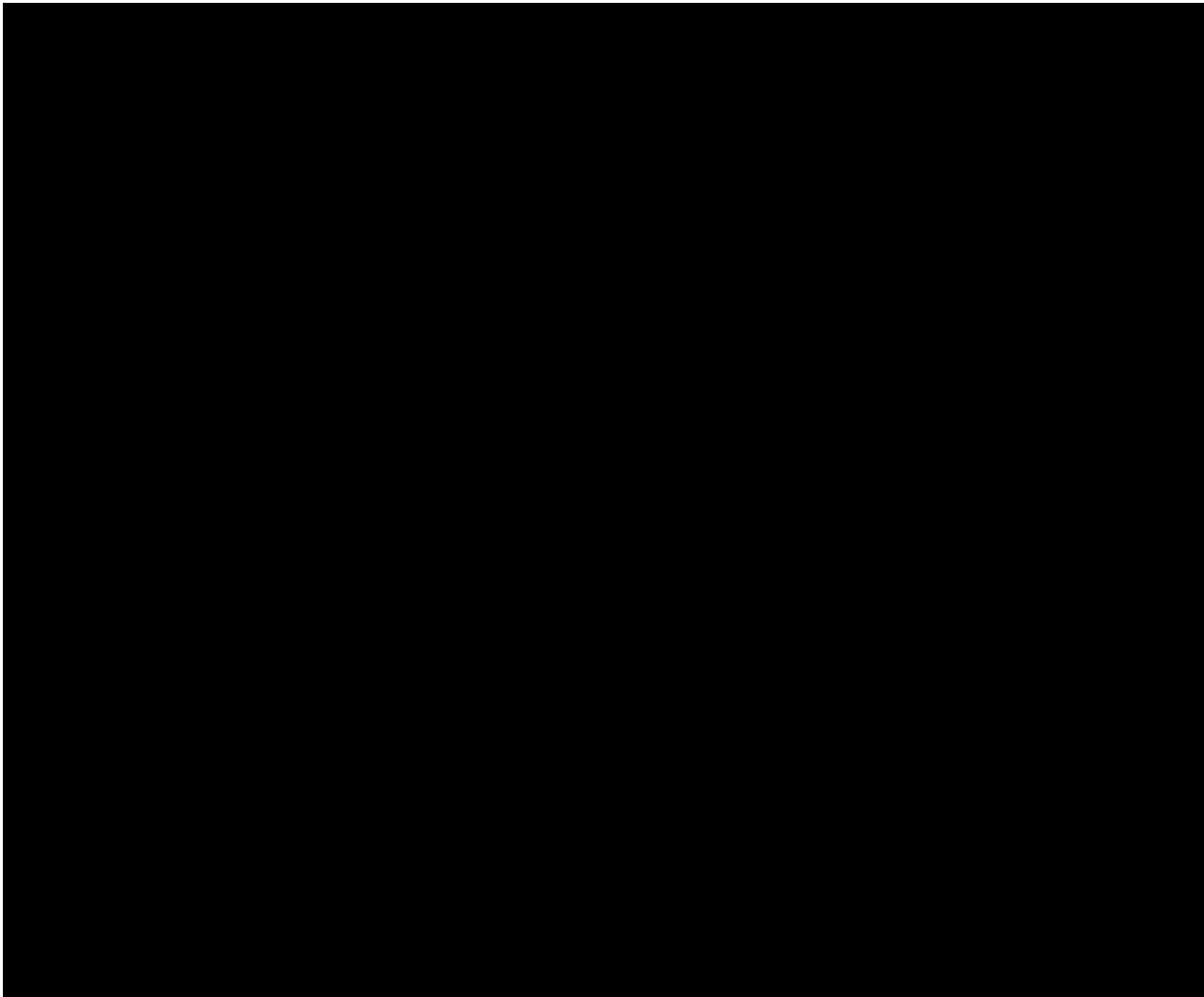
84. As described further in the sections below, Lumify has accounted for a substantial and increasing share of revenues, units, and volume in the eye redness reliever marketplace in the U.S.
85. To examine Lumify's performance relative to marketplace competitors, I

analyzed IRI POS data produced by Bausch & Lomb in this matter. As described above, the IRI POS data are used by Bausch & Lomb in the normal course of business. The products included in this dataset are comparable to Lumify in the sense that they are redness reliever eye drops.

86. Comparing the performance of Lumify with that of other eye redness relievers indicates that Lumify is the preferred choice for a substantial proportion of patients and providers and has filled a gap in the marketplace that other eye redness relievers have not adequately met.

1. Revenues

87. As captured in the IRI POS data underlying Figure 5, below, Lumify's annual share of U.S. sales increased from [REDACTED] in Q3 2018, the first full quarter after launch, to [REDACTED] in Q2 2022, the last full quarter of data available. (Appendix 11.) Even though the other largest marketplace participants, Clear Eyes[®], Rohto[®], and Visine[®], were already well-established in the marketplace prior to Lumify's launch, Lumify outsold each competitor over the Q2 2018 to Q2 2022 period. Specifically, Lumify's revenues over the period were [REDACTED] and its next closest competitor, Clear Eyes[®], generated revenues of [REDACTED] million over the same period. (Appendix 9.)



88. As shown in Figure 5, above, Lumify quickly became a marketplace leader after its launch. Within three months of launch, Lumify had achieved approximately [REDACTED] marketplace penetration. (EX-2023, ¶22.) Moreover, from Q1 2019, the first quarter Lumify became the marketplace leader based on revenues, to Q2 2022, the last full quarter available in the data, Lumify's annual revenues increased at a CAGR of [REDACTED]. (Appendix 9.) The CAGRs of the other largest marketplace participants, Clear

Eyes[®], Rohto[®], and Visine[®] were [REDACTED] percent, [REDACTED] percent, and [REDACTED] percent, respectively, over the same time period. (Appendix 9.) In other words, even after surpassing all marketplace participants in terms of revenues, Lumify continued to grow at a faster rate than its competitors, further solidifying its successful performance.

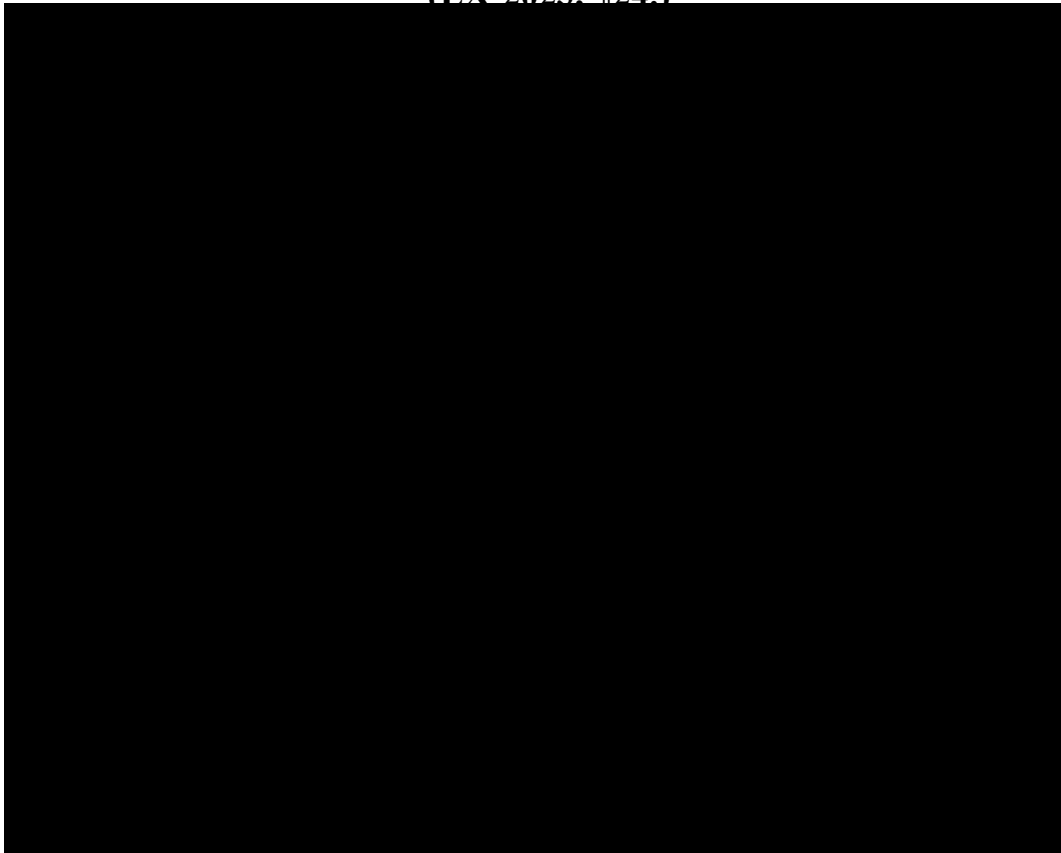
89. Furthermore, the evidence I have reviewed shows that Lumify has disrupted the redness reliever marketplace such that it is not only taking share from competitors, but is likely also increasing sales and driving growth of the entire redness reliever marketplace. As shown in Figure 6, below, and described in Mr. Ferris's declaration, IRI data on U.S. retail sales across all outlets indicate that sales in the redness reliever marketplace stayed relatively flat between 2016 and 2017, the two years immediately before Lumify's launch. (EX-2023, ¶24.) Since Lumify's launch, however, total sales in the overall redness reliever marketplace have grown tremendously, even though total sales of redness relievers *excluding* Lumify have remained stagnant. For the 2017 to 2021 period, sales in the overall redness reliever marketplace increased by [REDACTED] percent, from [REDACTED] million in 2017, the year prior to Lumify's launch, to [REDACTED] million in 2021, the most recent year with full data, while sales of redness relievers *excluding* Lumify stayed at approximately the same level as they

were in 2016 and 2017.¹² (EX-2023, ¶24.) According to Mr. Ferris, prior to Lumify's launch, less than 10 percent of eye care professionals recommended *any* redness reliever to their patients, while that share has grown to 50 percent since Lumify's launch, with 85 percent of those recommendations being for Lumify. (EX-2023, ¶7.) Moreover, much of Lumify's growth has been driven by new households entering the redness reliever marketplace and high rates of repeat purchase relative to competitors. (EX-2023, ¶23.) Therefore, Lumify not only captured sales that otherwise would have gone to competitors, but likely drove the growth of the redness reliever marketplace as a whole.

¹²

Calculated as [REDACTED] percent = [REDACTED]

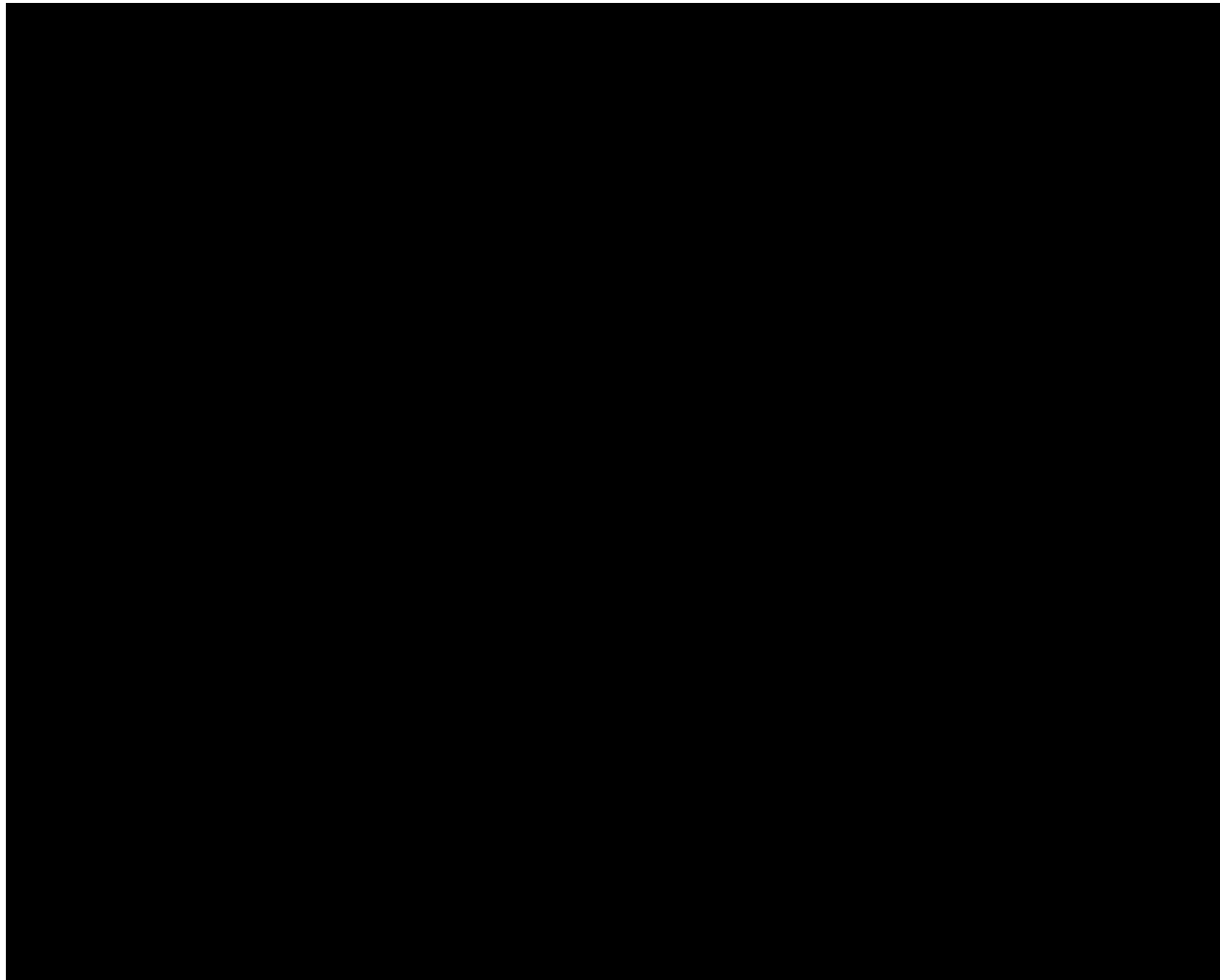
Figure 6
U.S. Retail Dollar Sales of Redness Relievers
IRI Database, All Outlets
(EX-2023, ¶24.)



2. Units

90. Drugs have differences in formulations, dosages, and packaging, which make it challenging to directly compare unit levels and shares across drugs. However, it can be helpful to analyze changes in units over time, as such trends can provide insight into the drugs' varying levels of acceptance in the marketplace.
91. As above, I consider Lumify's performance relative to other eye redness relievers [REDACTED]

[REDACTED]. As captured in the IRI POS data underlying Figure 7, below, Lumify's annual share of U.S. unit sales increased from [REDACTED] in Q3 2018, the first full quarter after launch, to [REDACTED] in Q2 2022, the last full quarter of data available. (Appendix 15.)

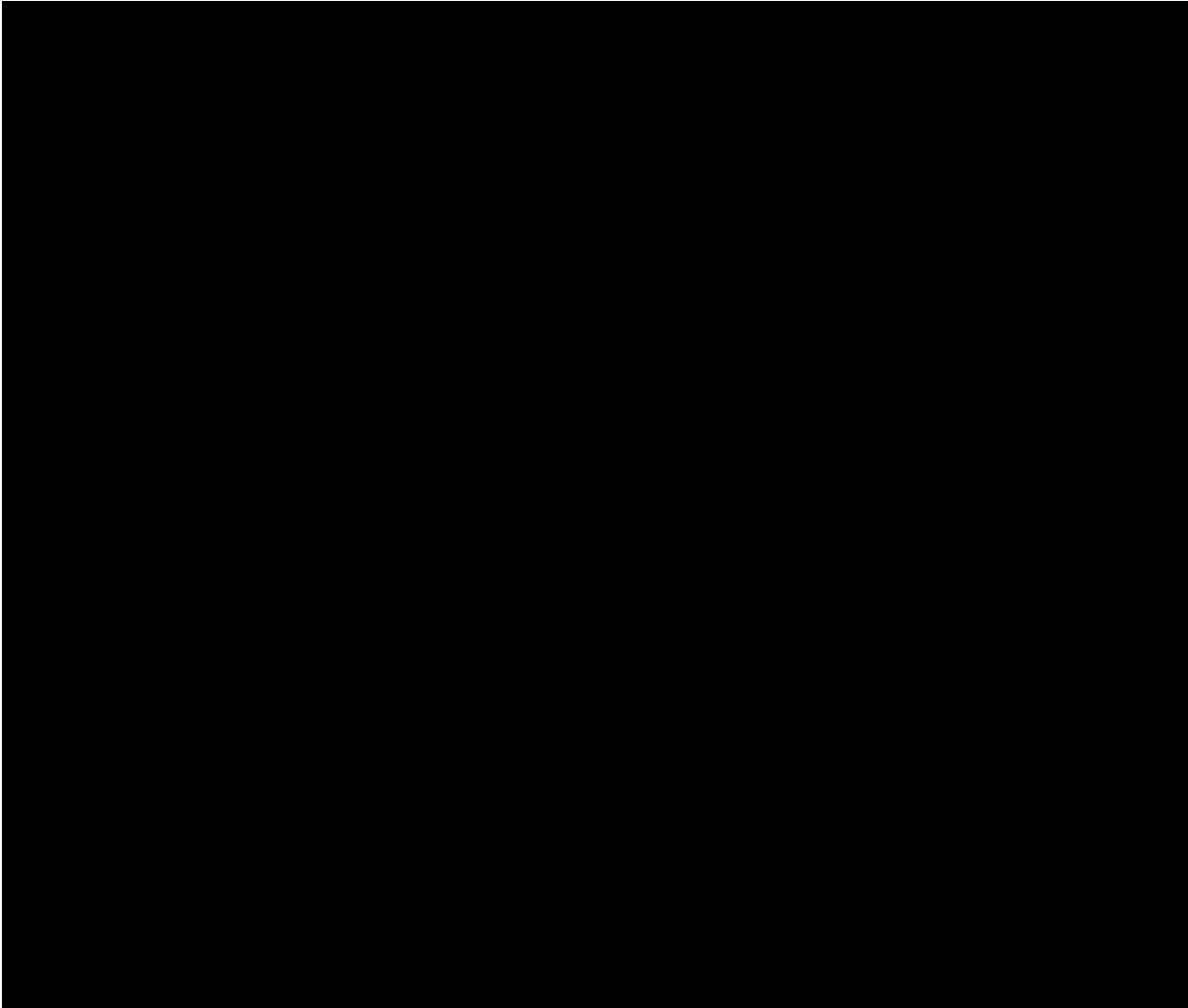


92. As shown in Figure 7, above, Lumify's share of unit sales has increased steadily from launch through Q2 2022. While Lumify does not have the highest share of unit sales, its unit sales performance is notable given its higher price relative to the other eye redness relievers available. Moreover, Lumify

consistently has gained share each year since launch compared with its competitors, which have not experienced consistent yearly increases in marketplace share.

3. Volume

93. Similar to unit sales, it can be challenging to directly compare volume (here, fluid ounce) sales and shares across drugs, given differences in formulations and dosages. However, it can be helpful to analyze changes in liquid volume sales over time, as such trends can provide insight into the drugs' varying levels of acceptance in the marketplace.
94. As above, I consider Lumify's performance relative to other eye redness relievers [REDACTED]
[REDACTED]. As captured in the IRI POS data underlying Figure 8, below, Lumify's annual share of U.S. volume sales increased from [REDACTED] in Q3 2018, the first full quarter after launch, to [REDACTED] in Q2 2022, the last full quarter of data available. (Appendix 21; Appendix 22.)



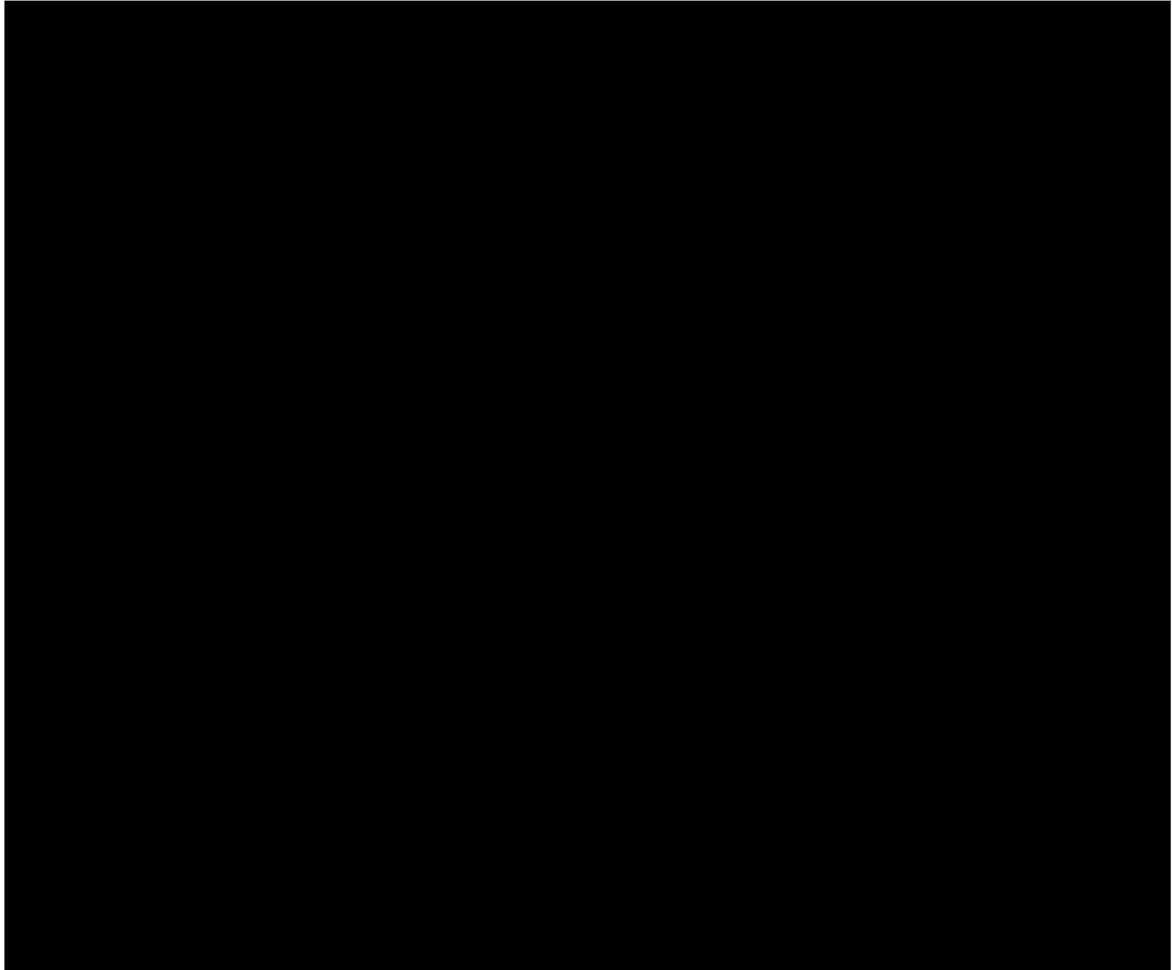
95. As shown in Figure 8 above, Lumify has steadily increased its share of volume sales from launch through Q2 2022. While Lumify does not have the highest share of volume sales, its volume sales performance is notable given its higher price relative to the other eye redness relievers available. Moreover, Lumify consistently has gained share each year since launch compared with its competitors, which have not experienced consistent yearly increases in marketplace share.

4. Prices

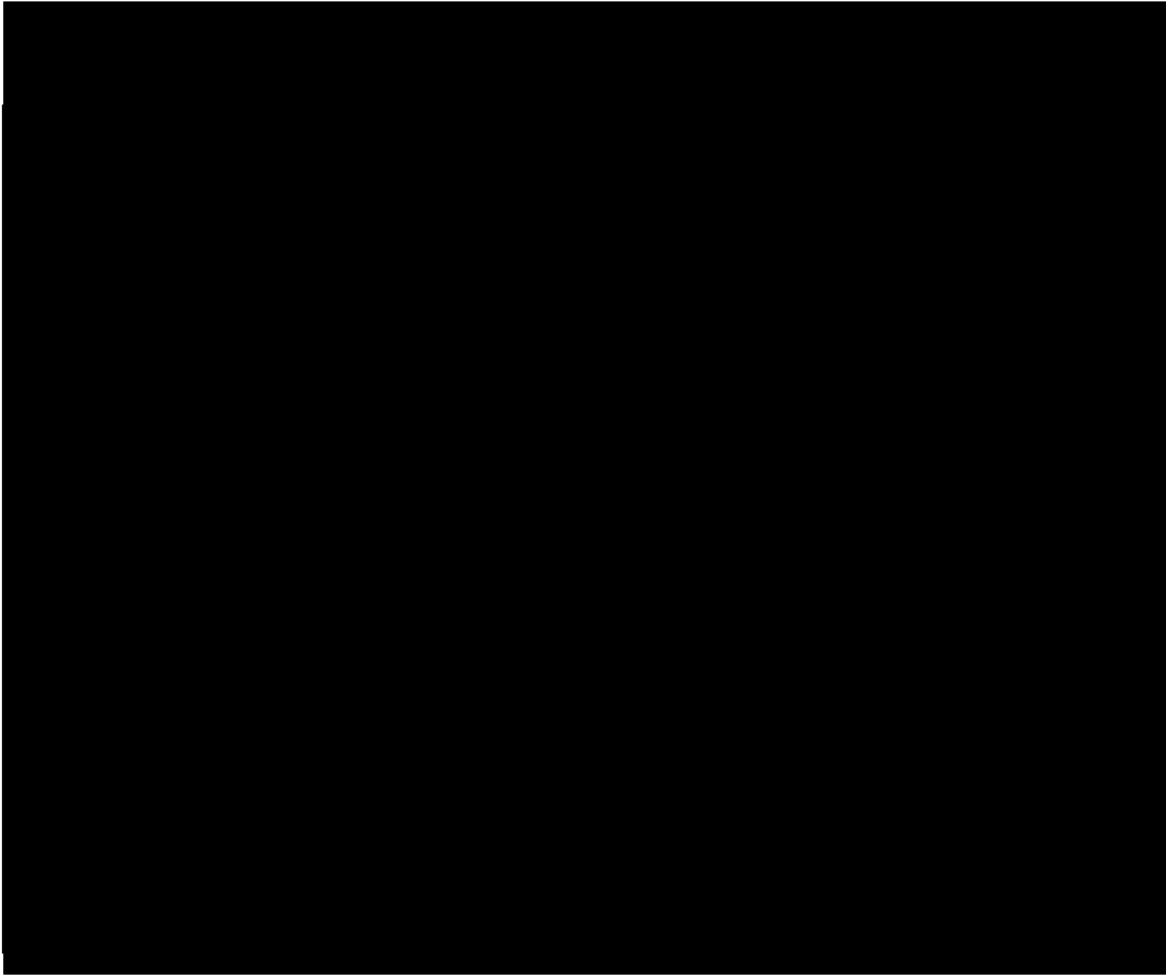
96. To analyze prices, I (1) divide U.S. revenues by U.S. units to estimate an implied average price per unit, and (2) divide U.S. revenues by U.S. volume (in fluid ounces) to estimate an implied average price per fluid ounce. For the same reason it is challenging to directly compare unit and volume levels and shares across drugs, as described above, it can be difficult to compare prices due to drugs having different formulations and dosages. However, it can be helpful to analyze changes in prices for drugs with similar dosage frequency, and to compare changes in prices over time across drugs. As above, I consider Lumify's prices relative to other eye redness relievers [REDACTED]

[REDACTED]

97. As captured in the IRI POS data underlying Figure 9, below, Lumify's average U.S. price per unit increased from [REDACTED] in Q3 2018, the first full quarter after launch, to [REDACTED] in Q2 2022, the last full quarter of data available. (Appendix 17; Appendix 18.) Over this entire time period (Q3 2018 to Q2 2022), Lumify's average price per unit was [REDACTED], while the prices per unit of other eye redness relievers ranged from [REDACTED] (Murine[®]) to [REDACTED] (Similasan[®]). (Appendix 17.)



98. As captured in the IRI POS data underlying Figure 10, below, Lumify's average U.S. price per fluid ounce decreased from [REDACTED] in Q3 2018, the first full quarter after launch, to [REDACTED] in Q2 2022, the last full quarter of data available. (Appendix 23; Appendix 24.) Over this entire time period (Q3 2018 to Q2 2022), Lumify's average price per fluid ounce was [REDACTED], while the prices per fluid ounce of other eye redness relievers ranged from [REDACTED] (Murine®) to [REDACTED] (Similasan®). (Appendix 23.)



99. As shown in Figure 9 and Figure 10, Lumify is notably more expensive than its competitors in terms of both price per unit and price per fluid ounce. The high prices shown in the IRI POS data are corroborated by publicly-available third-party sources that indicate Lumify is more expensive, with one source noting that the “only downside to [Lumify] is they cost more than traditional redness relief eye drops.” (EX-2102; *see also* EX-2150; EX-2023, fn. 3.) Moreover, as discussed above, I understand that Lumify’s recommended dosage is, at most, one drop in each eye up to four times a day whereas most

competitors' recommended dosages are, at most, up to two drops in each eye up to four times a day. Even assuming the other eye redness relievers are used twice as much, Lumify is *more than* twice its competitors' prices per fluid ounce, which suggests that Lumify is more expensive from a daily recommended dosage perspective. Lumify's performance despite the fact that it is notably more expensive than its competitors indicates that Lumify is the preferred choice for a substantial proportion of patients and providers and has filled a gap in the marketplace that other eye redness relievers have not adequately met.

c. Third-Party Perceptions

100. Third parties have recognized Lumify's marketplace success, with companies such as Nielsen and IRI highlighting Lumify's exceptional performance. (EX-2023, ¶6; EX-2045 at 18; EX-2125.) BASES, a Nielsen Global Consumer business division, listed Lumify "in the 'Superstar' category for its success in driving sales and category growth." (EX-2051; EX-2107.)

iv. Barriers to Adoptions

101. Lumify has succeeded in the marketplace despite facing substantial barriers to adoption. As of Lumify's launch in Q2 2018, at least 15 other eye redness

relievers had been in the marketplace for a significant period of time.¹³ For example, Visine[®] has been available for decades, Rohto[®] was launched in the U.S. in 2001, and Clear Eyes[®] was launched in the U.S. in 2010. (See EX-2020, ¶¶266, 281; EX-2095; EX-2099.) As described above, these long-established eye redness relievers were available for relatively low prices, which likely would have limited the success of a higher-priced competitor that did not satisfy a long-felt but unmet need in the eye redness reliever marketplace.

2. Causal Nexus

i. Legal Standard

102. I understand that, in addition to demonstrating that a product embodying the patented technology has been a marketplace success, establishing the commercial success of a patented technology also requires that there be a causal nexus between the embodying product's success and the patented

¹³ Such eye redness relievers include Advanced Eye Relief[®], Clear Eyes[®], Rohto[®], Visine[®], Colirio[®], CVP[®], Genomma[®], Medic's Choice[®], Murine[®], Ocusan[®], ProMex Colirio[®], Refresh[®], Similasan[®], Solutina[®], and Valet[®], along with "PL," which I understand refers to "private label" options. (See Appendix 9; EX-2023, ¶28; EX-2057; EX-2058.)

technology.

103. I understand that a “causal nexus” requirement is intended to ensure that there is some connection between the patented feature or features, where “some connection” refers to more than just a nominal willingness to pay for such features by customers.

ii. Analysis

a. Benefits of the Claimed Inventions

104. I understand from Dr. Noecker that Lumify is a commercial embodiment of certain claims of the '742 patent. (EX-2020, ¶¶266, 301, 311.) Moreover, I understand that, unlike prior art redness relievers, the claimed inventions reduce redness with little to no rebound hyperemia or tachyphylaxis, advantages that are key to Lumify's success in the U.S. (EX-2020, ¶¶305-308, 311.) I also understand that the claimed inventions provide unexpectedly superior redness relief. (EX-2020, ¶¶283-285, 311.)
105. I understand from Dr. Noecker that the claims of the '742 patent are generally directed to a method for reducing redness of the eye consisting essentially of administering brimonidine at a concentration between 0.001 and 0.05 percent weight by volume. (EX-2020, ¶¶86-87.) I further understand that the attributes of Lumify that differentiate it from other eye redness relievers include its tolerability, its safety (*i.e.*, minimal side effects, including lack of rebound

redness), its efficacy, and the lack of tachyphylaxis even after repeated use over time. (EX-2020, ¶¶93, 311.) I understand that these differentiating benefits of Lumify are directly related to the use of low-dose brimonidine tartrate and Lumify's unique mechanism of action.

106. Furthermore, as discussed above, Bausch & Lomb's decision to license in Lumify from Eye Therapies indicates that Bausch & Lomb expected Lumify to be a worthwhile investment. In fact, Bausch & Lomb already sold an eye redness reliever, Advanced Eye Relief[®], and yet still chose to enter into a license agreement with Eye Therapies in order to develop Lumify. Bausch & Lomb would not have entered into a license agreement with Eye Therapies if it did not anticipate significant incremental benefits from the claimed inventions.

b. Clinical Importance of the Claimed Inventions

107. The benefits of pharmaceuticals are evaluated by patients and intermediaries. For OTC drugs treating eye conditions, one important intermediary is a patient's optometrist. (EX-2044 at 13-14; EX-2116.) Optometrists consider the side effects of treatments, as well as their safety and efficacy, when making recommendations. (EX-2050; EX-2130.)
108. I understand that Lumify's tolerability, safety (*i.e.*, minimal side effects, including lack of rebound redness), efficacy, and the lack of tachyphylaxis

even after repeated use over time differentiate Lumify from other eye redness relievers and drive Lumify's success in the U.S. (EX-2020, ¶¶93, 311; EX-2023, ¶¶15-18.) Further, those relative advantages derive from the low-dose brimonidine tartrate formulation, as described above. (EX-2020, ¶311.)

109. In 2013, when Bausch & Lomb first licensed the technology from Eye Therapies, Mark B. Abelson, clinical professor of ophthalmology at Harvard Medical School, explained that “[t]he new low dose brimonidine formulation appears to provide greater microvessel constriction at mucosal surfaces and is thought to retain more optimal blood flow from larger feeder vessels,” which are “promising indications that this new technology may address some of the issues commonly seen in current therapies.” (EX-2117.)
110. Clinical studies of Lumify also demonstrated Lumify's overall combination of tolerability, safety (minimal side effects, including lack of rebound redness), efficacy, and the lack of tachyphylaxis even after repeated use over time.
111. Bausch & Lomb and Eye Therapies conducted six clinical studies to assess the safety and efficacy of low-dose brimonidine tartrate for eye redness relief. (EX-2052 at slide 8.) Overall, researchers found low-dose brimonidine tartrate to be safe, well tolerated, and effective in reducing eye redness with minimal rebound redness and tachyphylaxis. (EX-2052 at slides 11, 13, 23.)

112. Many documents illustrate the importance of the features attributable to the claimed inventions that resulted in an improved combination of tolerability, safety, and efficacy relative to competitors and contributed to the marketplace success of Lumify, including Bausch & Lomb's marketing materials and market research, as well as third-party perceptions, described below.

1. Marketing Materials

113. According to Mr. Ferris, the commercial strategy for Lumify since its launch consistently has centered on Lumify's unique ability to reduce eye redness, and all Lumify marketing, promotional, and sales materials are consistent with the FDA-approved indication for reducing eye redness. (EX-2023, ¶8.)

114. Bausch & Lomb's marketing materials indicate that the combination of tolerability, safety, efficacy, and the lack of tachyphylaxis even after repeated use over time makes Lumify—whose use is covered by certain claims of the '742 patent—a unique product offering in the U.S. eye redness reliever marketplace, and ultimately drives its success.

115. Lumify's marketing and promotional materials consistently highlight the benefits of the claimed inventions, including the lack of a reduction in efficacy after repeated use over time and reduced side effects, especially the reduced incidence of rebound redness, relative to Lumify's competitors. Because the purpose of marketing is to emphasize features that are important to consumers

and thereby drive sales, Bausch & Lomb's decision to highlight the features attributable to the claimed inventions strongly indicates the contribution of these features to Lumify's marketplace success.

116. Indeed, Bausch & Lomb's public-facing documents prominently display information about Lumify's formulation, efficacy, and lower risk of side effects. For example, a marketing brochure for eye care professionals advertised Lumify's "[s]trong safety and efficacy profile with low risk for rebound hyperemia or tachyphylaxis in clinical trials," as shown in Figure 11, below. (EX-2055.)

Figure 11
Lumify Brochure
(EX-2055.)

The brochure for Lumify eye drops features a box and a bottle of the product. The box is white with a large image of a blue eye and the text "BAUSCH+LOMB", "LUMIFY", "BRIMONIDINE TARTRATE OPHTHALMIC SOLUTION 0.025% REDNESS RELIEVER EYE DROPS", and "Sterile". A purple seal on the box says "FDA APPROVED". The bottle is white with a purple cap and has the same text as the box. To the right of the product images, there are three bullet points: "The first and only OTC eye drop with low dose brimonidine tartrate (0.025%)", "Strong safety and efficacy profile with low risk for rebound hyperemia or tachyphylaxis in clinical trials", and "Starts working within 1 minute - lasts for up to 8 hours". Below these bullet points are two purple circles. The first circle contains "1 MIN" and "95% reported significant improvement in just 1 minute†". The second circle contains "8 HOURS" and "79% maintained significant redness reduction at 8 hours†". At the bottom, a small note says "†Based on patient reported findings from Phase 3."

- The first and only OTC eye drop with low dose brimonidine tartrate (0.025%)
- Strong safety and efficacy profile with low risk for rebound hyperemia or tachyphylaxis in clinical trials
- Starts working within 1 minute - lasts for up to 8 hours

1 MIN
95% reported significant improvement in just 1 minute†

8 HOURS
79% maintained significant redness reduction at 8 hours†

†Based on patient reported findings from Phase 3.

117. Lumify marketing materials also compared its lack of tachyphylaxis and rebound redness with competing products: “[eye redness relievers] potentially introduced unwanted side effects such as tachyphylaxis, rebound vasodilation, toxicity, and risk of over-use. [...] Research has shown that the mechanism of action of LUMIFY® can safely and efficaciously address ocular redness. In clinical trials, there were no reported serious side effects such as intraocular pressure changes, allergic reaction, or pupil effects; no reports of tachyphylaxis, and few reports of rebound vasodilation.” (EX-2055; EX-2056

at 2.)

118. Moreover, Bausch & Lomb prominently displays the patented formulation of Lumify and its benefits relative to competitors on the Lumify website. (EX-2023, ¶¶11-12.) Specifically, the website homepage notes that Lumify has “an ingredient no other over-the-counter eye drop has: low-dose brimonidine. It selectively targets redness in your eyes, which leads to a lower risk of the side effects associated with other redness relievers when used as directed.” (EX-2109.)
119. The Lumify website further highlights Lumify’s reduced risk of rebound redness and lack of tachyphylaxis relative to competitors, stating that Lumify’s low-dose brimonidine tartrate formulation brightens eyes “with a low risk of rebound redness” and that “[d]octors like LUMIFY because of the reduced risk of rebound redness and because it uses no bleach or dyes. And it’s clinically proven to be safe, effective, and not lose efficacy over time when used as directed.” (EX-2112. Emphasis removed.) As shown in Figure 12, below, Lumify’s website describes low-dose brimonidine tartrate as the “break-through [...] star ingredient” to treat eye redness “with a lower risk of certain side effects.” (EX-2112. Emphasis removed.)

Figure 12
Lumify's Consumer-Facing Website
(EX-2112.)

LUMIFY IS DIFFERENT

What's the secret?
Alright, we'll share.



LUMIFY is a one-of-a-kind eye drop.*

LUMIFY is a **redness reliever like no other.*** Before LUMIFY, redness relievers pretty much used the same ingredients for decades, and they had certain side effects. But then there was a break-through: eye doctors figured out that low-dose brimonidine tartrate could **help relieve redness with a lower risk of certain side effects** when used as directed. That's how low-dose brimonidine became the star ingredient in LUMIFY - and **your little secret for amazing-looking eyes.**

See the Drug Facts

*Low-dose OTC brimonidine

USE AS DIRECTED.

120. In its marketing to eye care professionals, the Lumify website similarly emphasizes the benefits attributable to the claimed inventions. (EX-2023, ¶13; EX-2111.) Lumify is described as a “redness reliever like no other” since it “is the first and only [OTC] eye drop developed with low-dose brimonidine tartrate for the treatment of ocular redness” and it has “[f]ast acting and long lasting efficacy,” a “unique method of action for reducing redness,” and “[l]ow risk for tachyphylaxis or rebound hyperemia when used as directed.” (EX-2111.) Lumify’s healthcare provider-facing website further highlights that these benefits differentiate Lumify from other eye redness relievers

(Figure 13) and provides information from clinical trials on the lack of tachyphylaxis and rebound redness (Figure 14). (EX-2111.)

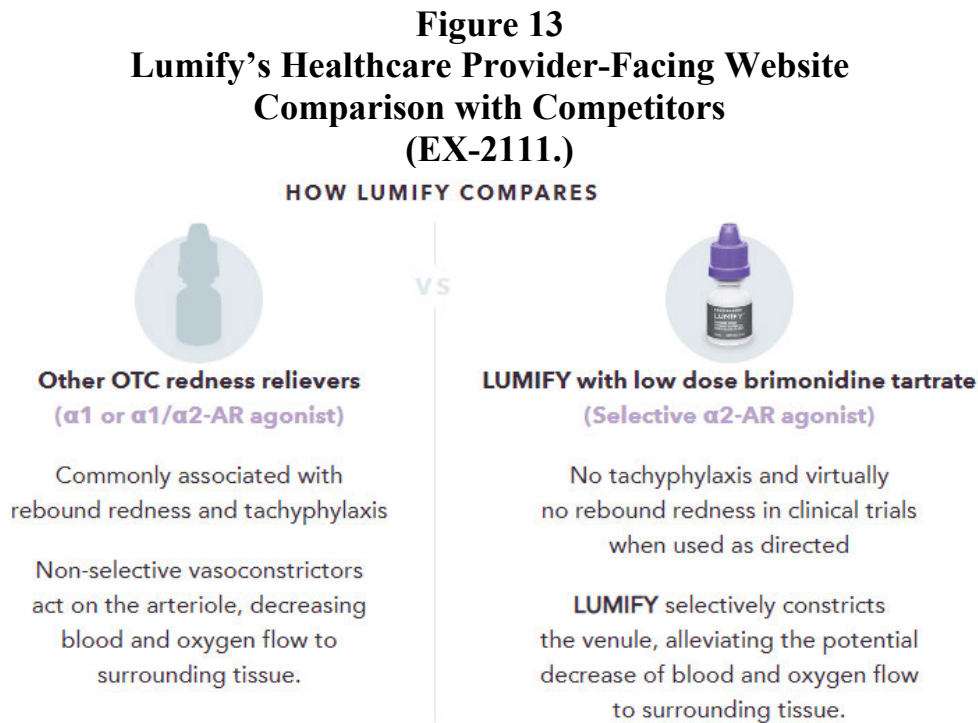
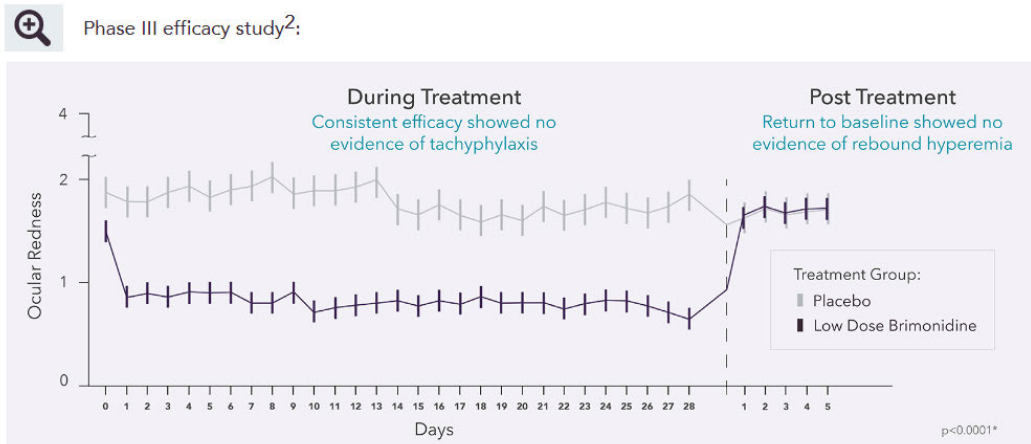


Figure 14
Lumify's Healthcare Provider-Facing Website
Safety and Efficacy
(EX-2110.)

LOW RISK FOR TACHYPHYLAXIS OR REBOUND HYPEREMIA¹



Overall, **six clinical** studies were conducted in over 600 patients to evaluate safety and efficacy, with **no evidence of allergic reactions** reported.

2. Market Research

121. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

122. I understand from Mr. Ferris that Bausch & Lomb [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Third-Party Perceptions

123. Third parties have recognized Lumify's marketplace success and, importantly, the significance of the benefits attributable to the claimed inventions in driving that success and differentiating Lumify from its competitors.
124. Medical website Verywell Health recommended Lumify as the best overall eye redness reliever, specifically identifying "[w]on't cause rebound effect" as a key benefit. Conversely, the website listed "[m]ay cause rebound effect" as a disadvantage of other featured products such as Visine[®] eye drops. (EX-2146.)
125. Similarly, a review of Lumify from health and wellness website IntroWellness

noted that Lumify’s unique formulation differentiates it from competitors, noting, “[T]raditional redness relief eye drops contain active ingredients that are non-selective[...]. As a result, traditional redness relief eye drops lose their effectiveness with continued use and often lead to rebound redness. On the other hand, Lumify selectively reduces the size of veins in your eye. This selectivity allows more oxygen to enter other areas of your eye, allowing them to appear a lot brighter and whiter (yippee!). Also, Lumify was designed to significantly reduce your likelihood of rebound redness.” (EX-2102.) The review identified Lumify’s high price point relative to competitors as its “only downside” and concluded, “So, are [Lumify] eye drops really better than traditional red eye drops? Honestly, yes...it’s not even close!” (EX-2102; *see also* EX-2020, ¶312.)

126. Lumify also has won numerous awards that recognize the features of Lumify that are attributable to the claimed inventions. *Glamour* magazine named Lumify to its “Best Beauty Innovators of 2022” annual awards list, noting that Lumify “is the only over-the-counter eye drop using the active ingredient brimonidine, which works to reduce redness and enhance whiteness.” (EX-2100.) Several beauty websites featured Lumify on end-of-year awards lists based on its unique formulation and lack of rebound redness, stating that Lumify “doesn’t use the harmful redness-correcting science of every other

over-the-counter eye drop—which means your eyes aren’t twice as red when they wear off” and “unlike other redness-relief drops, [Lumify] doesn’t leave you with *more* redness later.” (EX-2101; EX-2114; EX-2144.)

iii. Role of Pricing and Promotion

127. As noted above, the test for commercial success does not require that the patented benefits be the only reason for the product’s success. Instead, the patented benefits must be motivating (or important) factors. Accordingly, the existence of other demand drivers does not negate a showing of commercial success. This makes eminent economic sense. Demand for a product, pharmaceutical or not, is driven by a host of factors, not just one.¹⁴ (EX-2047 at 48.)

128. The marketing of Lumify matters. But it is not the primary driver, to the exclusion of the benefits attributable to the claimed inventions, of the marketplace success experienced by Lumify.

a. Overview

129. The type and extent of advertising for any product or service varies depending

¹⁴ It is my understanding that to prove a patent is commercially successful does not require that the patented feature(s) be the only reason for a product’s success. Instead, the patented feature(s) must be a motivating factor.

on the nature of the promoted goods and/or services. Advertising can be either informative or persuasive. Informative advertising notifies consumers of a product's existence and its characteristics, while persuasive advertising seeks to create what economists refer to as "spurious product differentiation." (EX-2041 at 3-4.) Research on pharmaceutical promotion has found that pharmaceutical promotion is primarily informative with respect to choices among differentiated drugs, but it is persuasive with respect to undifferentiated drugs. (EX-2043 at 1374.)

130. These findings are consistent with the notion that pharmaceutical products such as OTC products are "experience goods" that must be tried in order to assess the quality of the product. Promotion for experience goods seeks to inform customers of the product's existence and to encourage them to try the product, but following trial, the consumer's own experience with the product will dictate future consumption decisions.
131. In other words, the goal of promotion in the pharmaceutical industry is to encourage physicians and patients to try a drug in order to experience the drug first-hand. Physicians and patients must be made aware of the existence and benefits of a drug's advantages, and pharmaceutical promotion fulfills this role.

b. Pricing

132. As a general matter, low net prices for a branded (or any) drug encourage usage of that drug. Here, low pricing does not appear to be an advantage for Lumify. As discussed above, IRI POS data produced by Bausch & Lomb in this matter indicate that Lumify's average price is relatively high compared with other eye redness relievers, both branded and private label. Lumify was able to charge a significantly higher price per unit and per fluid ounce compared with competitors upon launch and has maintained its premium pricing over time. (Appendix 17; Appendix 18; Appendix 23; Appendix 24.) As of Q2 2022, Lumify's average price per unit was [REDACTED], compared with a range among its competitors between [REDACTED] (Medic's Choice®) and [REDACTED] (Similasan®), and Lumify's average price per fluid ounce was [REDACTED], compared with a range among its competitors between [REDACTED] (Medic's Choice®) and [REDACTED] (Similasan®). (Appendix 17; Appendix 23.)
133. Further, I understand that the IRI POS data discussed above generally reflect the net prices consumers pay at the register. (EX-2023, ¶32.) Therefore, the data I have reviewed indicate that Lumify's average price is relatively high even when accounting for promotions, discounts, and/or coupons.
134. Even as a premium, higher-priced product, Lumify achieved marketplace leader status (in terms of revenues) within a year of launch and, as of Q2 2022,

Lumify's marketplace revenue share exceeded [REDACTED] percent. (Appendix 9; Appendix 11.) Lumify has been able to achieve significant growth as a result of the treatment's features attributable to the claimed inventions, rather than through buying marketplace share through pricing initiatives, such as aggressive low pricing or coupon policies.

c. Promotion

135. Based on the information available in this proceeding, it does not appear that the success of Lumify has been driven by either aggressive or non-patent-oriented persuasive advertising. In fact, Bausch & Lomb's promotional efforts have emphasized the features attributable to the claimed inventions to favorably position Lumify in an eye redness reliever marketplace with numerous well-established competing products. Moreover, elevated marketing efforts in the first few years post-launch are consistent with a drug's typical life cycle. According to the Congressional Budget Office, "[p]harmaceutical manufacturers promote more of their products to both physicians and consumers in the first few years after a drug has received approval from the FDA." (EX-2042 at 7-8.)
136. According to Mr. Ferris, Lumify's promotional strategy since launch consistently has centered on the product's unique ability to relieve redness and Lumify's unique low-dose brimonidine tartrate formulation. I understand

from Mr. Ferris that all of Lumify's promotional materials are consistent with the FDA-approved indication for redness reduction. (EX-2023, ¶¶8-13.)

137. The information I have reviewed indicates that Lumify has been marketed to patients and physicians as a way to introduce them to various attributes of the drug. Bausch & Lomb's promotion of Lumify to eye care professionals involves disseminating key scientific results that reflect the proven efficacy for both short-term use and repeated use over time, as well as the tolerability and safety profile of the drug (*i.e.*, the benefits of the claimed inventions). For example, the Lumify website page for eye care professionals displays data from the Phase III efficacy study, including data on tachyphylaxis and rebound redness. (EX-2110.)
138. Moreover, as explained by Bausch Health's CFO, Paul Herendeen, while in the first year Bausch & Lomb had its "foot down [on] the promotional side" for Lumify, it did so because "our data suggest that when people use the product, they persist in using the product." (EX-2121.) Mr. Herendeen's view is supported by a Bausch Health 2021 Fiscal Year Presentation, which noted that Lumify's "Education and Awareness" follows from that fact that it is a "Differentiated Product" with a "[u]nique formulation that works differently [...] [c]ompared to other redness relievers." (EX-2075 at 22.) In other words, Lumify was promoted heavily in order to educate consumers and raise their

awareness of its differentiated and improved offering compared with other eye redness relievers.

139. Pricing and promotion matter for Lumify's performance, but they are not the primary driver, to the exclusion of the benefits attributable to the claimed inventions, of the marketplace success experienced by Lumify.

IV. CONCLUSION

140. Based upon my review and analysis of the evidence that I have received to date, it is my opinion that the commercial embodiment of certain claims of the '742 patent, Lumify, has been a marketplace success. Moreover, it is my opinion that this success, in large part, has been driven by the benefits attributable to the inventions claimed in the '742 patent. As a result, the inventions claimed in the '742 patent have been a commercial success.
141. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.
142. In signing this declaration, I understand that the declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I acknowledge that I may be

subject to cross examination in the case and that cross examination will take place within the United States. If cross examination is required of me, I will appear for cross examination within the United States during the time allotted for cross examination.

A handwritten signature in black ink, appearing to read 'John C. Jarosz', is written over a horizontal line.

John C. Jarosz
August 26, 2022

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John Jarosz, a Managing Principal of Analysis Group, Inc., specializes in applied microeconomics and industrial organization. He has performed research, given economic testimony, and provided strategy consultation in intellectual property, licensing, and commercial damages matters, including:

- evaluation of damages in patent, copyright, trade secret, trademark, and unfair competition cases (including lost profits, reasonable royalties, price erosion, unjust enrichment, accelerated market entry, and prejudgment interest);
- evaluation of injunctive relief and commercial success in a variety of intellectual property cases;
- strategy consultation regarding the nature and value of technology, methods to share technology, and reasonable compensation terms;
- analysis of compliance with FRAND/RAND commitments; and
- general commercial damages testimony in a variety of cases and across numerous industries.

Mr. Jarosz has been recognized for many years as among the top economic experts for IP matters by *Intellectual Asset Management* (IAM) in the IAM Patent 1000, which identifies leading patent professionals around the globe.

Prior to joining Analysis Group, Mr. Jarosz was a Director with Putnam, Hayes & Bartlett, Inc. Before that, he was a Senior Analyst with Richard J. Barber Associates, a Section Supervisor with Mutual of Omaha Insurance, and a Research Analyst with the Center for the Study of American Business.

EDUCATION

J.D.	University of Wisconsin
M.A. & Ph.D. candidate	Economics, Washington University, St. Louis
B.A., <i>Summa Cum Laude</i>	Economics and Organizational Communication, Creighton University

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PROFESSIONAL ASSOCIATIONS/MEMBERSHIPS

- American Economic Association
- American Law and Economics Association
- American Bar Association (Sections: Intellectual Property, Antitrust and Litigation)
- State Bar of Wisconsin (Section: Intellectual Property)
- American Intellectual Property Law Association (Sections: Federal Litigation, Licensing, Trade Secrets and Antitrust)
- Licensing Executives Society
 - Former Chair, Valuation and Taxation Committee
 - Former Member, Certified Licensing Professional Exam Writing Team
- Former Advisory Board - *The IP Litigator*
- Former Columnist (Damage Awards) - *The IP Litigator*
- Omicron Delta Epsilon (International Honor Society in Economics)
- Association of University Technology Managers
- Certified Licensing Professional
- Intellectual Property Owners Association (Committee: Damages and Injunctions)
- 2011 Presidential Rank Review Board
- Referee, Journal of Forensic Economics
- The Sedona Conference (Sections: Best Practices in Patent Litigation, Patent Damages and Remedies)
- IAM Patent 1000 (2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021): The World's Leading Patent Practitioners - Economic Experts
- IP Law360: Voices of the Bar

TESTIMONIAL EXPERIENCE

Patent Cases – Damages

- **Panasonic Corporation v. Getac Technology Corporation and Getac, Inc.**
United States District Court, Central District of California (Case No. 8:19-cv-01118-DOC-DFM)
Trial and deposition testimony and expert reports: monopolization/attempted monopolization counterclaim and design patent damages directed to market for rugged 2-in-1 portable computers.
- **Carnegie Institution of Washington and M7D Corporation v. Pure Grown Diamonds, Inc. and IIA Technologies PTE. Ltd d/b/a IIA Technologies**
United States District Court, Southern District of New York (Case No. 1:20-cv-00189-JSR)
Deposition testimony and expert report: reasonable royalty damages covering patents directed to methods and apparatus used for producing lab-grown diamonds.

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- **Carnegie Institution of Washington and M7D Corporation v. Fenix Diamonds LLC**
United States District Court, Southern District of New York (Case No. 1:20-cv-00200-JSR)
Deposition testimony and expert report: reasonable royalty damages covering patents directed to methods and apparatus used for producing lab-grown diamonds.
- **BASF Plant Science, LP v. Commonwealth Scientific and Industrial Research Organisation; and Commonwealth Scientific and Industrial Research Organisation, Grains Research and Development, Corp., and Nuseed Pty Ltd. v. BASF Plant Science, LP and Cargill, Inc.**
United States District Court, Eastern District of Virginia (Case No. 17-cv-503-HCM)
Trial and deposition testimony and expert report: reasonable royalty damages and injunctive relief covering patents directed to the production of plant-derived omega-3 oils.
- **Riddell, Inc. v. Kranos Corporation, d/b/a Schutt Sports**
United States District Court, Northern District of Illinois (Case No. 1:16-cv-04496)
Trial testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents covering football helmet technology.
- **Cedars-Sinai Medical Center v. Quest Diagnostics Inc. and Quest Diagnostics Nichols Institute**
United States District Court, Central District of California, Western Division (Case No. 17-cv-5169-GW-FFM)
Deposition testimony and expert report: damages associated with alleged misappropriation of trade secrets, breach of contract, and patent infringement involving diagnostic testing for irritable bowel syndrome (IBS).
- **Roche Diagnostics Corporation v. Meso Scale Diagnostics, LLC and Meso Scale Diagnostics, LLC v. Roche Diagnostics Corporation and BioVeris Corporation**
United States District Court, District of Delaware (Case No. 17-189 (LPS)(CJB))
Trial and deposition testimony and expert report: reasonable royalty damages related to alleged patent infringement involving electrochemiluminescent detection technology used in immunoassay kits.
- **Kranos IP Corporation, Kranos IP II Corporation, and Kranos Corporation d/b/a Schutt Sports v. Riddell, Inc.**
United States District Court, Northern District of Illinois (Case No. 1:17-cv-06802)
Deposition testimony and expert report: reasonable royalty damages and prejudgment interest involving patents covering football helmet technology.
- **Nichia Corporation v. Vizio, Inc.**
United States District Court, Central District of California (Case No. 8:16-cv-00545)
Deposition testimony and expert report: reasonable royalty damages and commercial success involving patents directed to light emitting diodes (LEDs).
- **Syngenta Crop Protection, LLC v. Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited**
United States District Court, Middle District of North Carolina (Case No. 1:15-cv-274)
Trial and deposition testimony and expert report: damages and prejudgment interest related to alleged patent and copyright infringement involving crop fungicide.
- **Integra Lifesciences Corporation, Integra Lifesciences Sales, LLC, Confluent Surgical, Inc., and Incept, LLC v. Hyperbranch Medical Technology, Inc.**
United States District Court, District of Delaware (Case No. 15-cv-00819)
Trial and deposition testimony and expert reports: lost profits, price erosion, reasonable royalty, prejudgment interest, preliminary relief, and commercial success involving patents directed to cranial and spinal dural repair sealants.

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- **Blue Spike, LLC v. Toshiba America, Inc., and Toshiba Corporation**
United States District Court, Eastern District of Texas, Tyler Division (Case No. 6:16-CV-430-RWS-JDL)
Damages hearing and early expert report: damages related to alleged patent infringement involving address space layout randomization (ASLR) technology.
- **Audio MPEG, Inc., U.S. Philips Corporation, TDF SAS, and Institut Für Rundfunktechnik GmbH v. Dell, Inc.**
United States District Court, Eastern District of Virginia, Norfolk Division (Case No. 1:15-CV-1674-AJT/TCB)
Deposition testimony and expert report: analysis of patent pool compliance with FRAND commitments and determination of FRAND-compliant royalties involving patents directed to the transmission and storage of digital audio files.
- **Koninklijke Philips Electronics N.V. and Philips Electronics North America Corporation v. ZOLL Medical Corporation**
United States District Court, District of Massachusetts (Case No. 1:10-cv-11041)
Trial and deposition testimony and expert report: lost profits, reasonable royalty damages, and prejudgment interest related to alleged patent infringement involving external defibrillators.
- **Erfindergemeinschaft UroPep GbR v. Eli Lilly and Company and Brookshire Brothers, Inc.**
United States District Court, Eastern District of Texas, Marshall Division (Case No. 2:15-cv-1202-WCB)
Trial and deposition testimony and expert report: reasonable royalty damages related to alleged patent infringement directed to phosphodiesterase (PDE) V inhibitor(s) indicated for the treatment of benign prostatic hyperplasia.
- **Koninklijke Philips Electronics N.V. and Philips Electronics North America Corporation v. ZOLL Lifecor Corporation**
United States District Court, Western District of Pennsylvania (Case No. 2:2012-cv-01369)
Deposition testimony and expert report: damages related to alleged patent infringement involving wearable defibrillators.
- **Luminara Worldwide, LLC v. Shenzhen Liown Electronics Co., Ltd, Central Garden and Pet Co., et al.; Shenzhen Liown Electronics Co., Ltd, Central Garden and Pet Co. v. Luminara Worldwide, LLC, et al. ; and Luminara Worldwide, LLC v. Shenzhen Liown Electronics Co., Ltd and Central Garden and Pet Co., et al.**
United States District Court, District of Minnesota (Case Nos. 14-cv-03103 (SRN/FLN) and 15-cv-03028 (SRN/FLN))
Deposition testimony and expert reports: damages associated with alleged patent infringement and breach of contract, and unjust enrichment associated with breach of non-disclosure agreement and use of trade secrets, related to flameless candle technology and distribution.
- **MobileMedia Ideas LLC v. Apple, Inc.**
United States District Court, District of Delaware (Case No. 10-258-SLR)
Trial and deposition testimony and expert report: reasonable royalty involving patents directed to incoming call, playlist, and location detection features used in smartphones, tablets, and portable media players.
- **MAZ Encryption Technologies LLC v. Blackberry Corporation**
United States District Court, District of Delaware (Case No. 1:13-cv-00304-LPS)
Deposition testimony and expert report: reasonable royalty involving a patent directed to encryption/decryption methods used in smartphone and tablet operating systems.

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- **BroadSoft, Inc. v. Callwave Communications, LLC**
United States District Court, District of Delaware (Case No. 13-cv-0711-RGA)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to telecommunications call processing.
- **Advanced Video Technologies, LLC v. Blackberry, LTD. and Blackberry Corporation**
United States District Court, Southern District of New York (Case No. 1:11-cv-06604-CM-RLE)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to video compression and decompression.
- **Drone Technologies, Inc. v. Parrot S.A. and Parrot, Inc.**
United States District Court, Western District of Pennsylvania (Case No. 2:14-cv-0111)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to drone technology.
- **Bayer CropScience AG and Bayer CropScience NV v. Dow AgroSciences LLC, Mycogen Plant Science Inc., Agrigenetics, Inc. d/b/a Mycogen Seeds LLC, and Phytogen Seed Company, LLC**
International Chamber of Commerce (Case No. 18892/VRO/AGF)
Arbitration hearing testimony and expert report: damages associated with alleged breach of contract and patent infringement involving genetically modified seed.
- **CertusView Technologies, LLC v. S & N Locating Services LLC and S & N Communications, Inc.**
United States District Court, Eastern District of Virginia, Norfolk Division (Case No. 2:13-cv-346 (MSD/LRL))
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to creation of electronic sketches for utility location purposes.
- **Ecolab USA Inc. and Kleantech Systems, LLC v. Diversey, Inc.**
United States District Court, District of Minnesota (Civil Action No. 12-cv-1984 (SRN/JJG))
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving products covering the monitoring of hospital cleaning.
- **Everlight Electronics Co. Ltd., and Emcore Corporation v. Nichia Corporation and Nichia America Corporation v. Everlight Americas, Inc.**
United States District Court, Eastern District of Michigan, Southern Division (Case No. 4:12-cv-11758 GAD-MKM)
Trial and deposition testimony, expert report and declaration: commercial success, lost profits, reasonable royalty, and prejudgment interest involving patents directed to LEDs.
- **Source Search Technologies, LLC v. Kayak.com, Inc.**
United States District Court, District of New Jersey (Case No. 2:11-cv-03388-FSH-MAH)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to online exchanges.
- **Universal Electronics, Inc. v. Universal Remote Control, Inc.**
United States District Court, Central District of California, Southern Division (Case No. SACV12-329AG (JPRx))
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to universal remotes.

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- **Prowess, Inc. v. RaySearch Laboratories AB, et al.**
United States District Court, District of Maryland (Case No. 11 CV 1357 (WDQ))
Deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents directed to treatment planning software for radiation therapy.
- **JDS Therapeutics, LLC and Nutrition 21, LLC v. Pfizer Inc., Wyeth LLC, Wyeth Consumer Healthcare Ltd., and Wyeth Consumer Healthcare LLC**
United States District Court, Southern District of New York (Case No. 1:12-cv-09002-JSR)
Deposition testimony and expert report: commercial success, reasonable royalty, and unjust enrichment involving patents and trade secrets directed to the use of chromium picolinate in multi-vitamins.
- **comScore, Inc. v. Moat, Inc.**
United States District Court, Eastern District of Virginia, Norfolk Division (Case No. 2:12CV695-HCM/DEM, Lead Case 2:12CV351-HCM/DEM)
Deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents directed to online analytics.
- **Impulse Technology Ltd. v. Microsoft Corporation, Electronic Arts, Inc., Ubisoft Holdings, Inc., and Konami Digital Entertainment Inc.**
United States District Court, District of Delaware (Case No. 11-586-RGA-CJB)
Deposition testimony and expert report: reasonable royalty involving patents directed to video game motion detection functionalities.
- **LendingTree, LLC v. Zillow, Inc., NexTag, Inc., and Adchemy, Inc.**
United States District Court, Western District of North Carolina, Charlotte Division (Case No. 3:10-cv-439-FDW-DCK)
Trial and deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents directed to internet loan matching systems.
- **Network Protection Sciences, LLC v. Fortinet, Inc.**
United States District Court, Northern District of California (Case No. 3:12-cv-01106-WHA)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to network security systems.
- **Shurtape Technologies, LLC and Shurtech Brands, LLC v. 3M Company**
United States District Court, Western District of North Carolina (Case No. 5:11-cv-00017)
Deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents directed to painter's tape.
- **Abbott Biotechnology Ltd. and AbbVie, Inc. v. Centocor Ortho Biothech, Inc.**
United States District Court, District of Massachusetts (Case No. 09-40089-FDS)
Deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents directed to the treatment of rheumatoid arthritis.
- **Wi-LAN Inc. v. Alcatel-Lucent USA Inc.; Telefonaktiebolaget LM Ericsson; Ericsson Inc.; Sony Mobile Communications AB; Sony Mobile Communications (USA) Inc.; HTC Corporation; HTC America, Inc.; Exedea Inc.; LG Electronics, Inc.; LG Electronics Mobilecomm U.S.A., Inc.; and LG Electronics U.S.A., Inc.**
United States District Court, Eastern District of Texas (Case No. 6:10-CV-521-LED)
Trial and deposition testimony, affidavit, and expert report: reasonable royalty and prejudgment interest involving patents directed to wireless telecommunication systems.

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- **Epos Technologies Ltd.; Dane-Elec S.A.; Dane-Elec Memory S.A.; and Dane-Elec Corporation USA v. Pegasus Technologies Ltd. and Luidia, Inc.**
United States District Court, District of Columbia (Case No. 07-cv-00416-WMN)
Deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents directed to digital pen products.
- **Life Technologies Corporation; Applied Biosystems, LLC; Institute for Protein Research; Alexander Chetverin; Helena Chetverina; and William Hone v. Illumina, Inc. and Solexa, Inc.**
United States District Court, Southern District of California (Case No. 3:11-cv-00703)
Deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents directed to DNA amplification and sequencing technology.
- **TomTom, Inc. v. Michael Adolph**
United States District Court, Eastern District of Virginia (Case No. 1:12-cv-528)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to automotive navigation systems.
- **Carl B. Collins and Farzin Davanloo v. Nissan North America, Inc. and Nissan Motor Co., Ltd.**
United States District Court, Eastern District of Texas, Marshall Division (Case No. 2:11-cv-00428-JRG)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to automotive engines.
- **I.E.E. International Electronics & Engineering, S.A. and IEE Sensing, Inc. v. TK Holdings, Inc.**
United States District Court, Eastern District of Michigan (Case No. 2:10-cv-13487)
Deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents directed to capacitive sensing used in automotive seats.
- **St. Clair Intellectual Property Consultants, Inc. v. Acer, Inc., et al.; Microsoft Corporation v. St. Clair Intellectual Property Consultants, Inc.**
United States District Court, District of Delaware (Case No. 09-354-JJF; 09-704-JJF; and 10-282-LPS)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to power management, bus configuration and card slot technology in laptops and desktops.
- **CardioFocus, Inc. v. Xintec Corporation (d/b/a Convergent Laser Technologies); Trimedyn, Inc.; and Cardiogenesis Corporation**
United States District Court, District of Massachusetts (Case No. 1:08-cv-10285 NMG)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to laser devices used for the treatment of advanced coronary artery disease.
- **Avocent Redmond Corp. v. Raritan Americas, Inc.**
United States District Court, Southern District of New York (Case No. 10-cv-6100 (PKC)(JLC))
Deposition testimony and expert report: lost profits, lost royalties, reasonable royalty and prejudgment interest involving a patent and contract directed to software and hardware products and technologies that provide connectivity and centralized management of IT infrastructure through KVM switches.

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- **Frontline Placement Technologies, Inc. v. CRS, Inc.**
United States District Court, Eastern District of Pennsylvania (Case No. 2:07-CV-2457)
Deposition testimony and expert report: lost profits, lost royalties, reasonable royalty and prejudgment interest involving a patent and contract directed to automated substitute fulfillment software.
- **Novozymes A/S and Novozymes North America, Inc. v. Danisco A/S; Genecor International Wisconsin, Inc.; Danisco US Inc.; and Danisco USA Inc.**
United States District Court, Western District of Wisconsin (Case No. 10-CV-251)
Trial and deposition testimony and expert report and expert declaration: lost profits, reasonable royalty, prejudgment interest and irreparable harm involving a patent directed to alpha-amylases used for fuel ethanol.
- **Triangle Software, LLC v. Garmin International, Inc.; Garmin USA, Inc.; TomTom, Inc.; and Volkswagen Group of America, Inc.**
United States District Court, Eastern District of Virginia, Alexandria Division (Case No. 1:10-CV-01457-CMH-TCB)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to providing personal navigation device functionality.
- **Northeastern University and JARG Corporation v. Google, Inc.**
United States District Court, Eastern District of Texas, Marshall Division (Case No. 2:07-cv-486(CE))
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to internet index and search technology.
- **Bissell Homecare, Inc. v. Dyson, Inc.**
United States District Court, Western District of Michigan (Case No. 1:08-cv-724)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to vacuum cleaner collection and discharge.
- **Toshiba Corporation v. Imation Corp.; Moser Baer India Ltd; Glyphics Media, Inc.; Ritek Corp.; Advanced Media, Inc.; CMC Magnetics Corp.; Hotan Corp.; and Khypermedia Corp.**
United States District Court, Western District of Wisconsin (Case No. 3:09-cv-00305-slc)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to DVDs.
- **Affinity Labs of Texas, LLC. v. BMW North America, LLC, et al.**
United States District Court, Eastern District of Texas, Lufkin Division (Case No. 9:08-CV-00164-RC)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to connecting a portable audio player to an automobile sound system.
- **Regents of the University of Minnesota v. AGA Medical Corp.**
United States District Court, District of Minnesota (Case No. 0:07-cv-04732 (PJS/RLE))
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to septal occlusion devices.
- **Ethicon Endo-Surgery, Inc. v. Hologic Inc. and Suros Surgical Systems, Inc.**
United States District Court, Southern District of Ohio, Western Division (Case No. 07-cv-00834)
Trial and deposition testimony and expert report: lost profits and reasonable royalty involving patents directed to biopsy equipment and methods, and the biopsy of soft tissue.

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- **Humanscale Corp. v. CompX International, Inc. and CompX Waterloo**
United States District Court, Eastern District of Virginia, Richmond Division (Case No. 3:09-CV-86-JRS)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to keyboard support mechanisms.
- **Carl Zeiss Vision GMBH and Carl Zeiss Vision International GMBH v. Signet Armorlite, Inc.**
United States District Court, Southern District of California (Case No. 09-CV-0657-DMS (POR))
Trial testimony and deposition testimony and expert report: lost profits, reasonable royalty, and lost licensing fees involving a patent directed to progressive eyeglass lenses.
- **ShopNTown LLC v. Landmark Media Enterprises, LLC**
United States District Court, Eastern District of Virginia, Norfolk Division (Case No. 2:08CV564)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to rental matching systems over the internet.
- **Cerner Corp. v. Visicu, Inc.**
United States District Court, Western District of Missouri, Western Division (Case No. 04-1033-CV-W-GAF)
Trial and deposition testimony and expert report: lost profits and reasonable royalty involving patents directed to electronic ICU monitoring systems.
- **Sanofi-Aventis Canada Inc.; Schering Corp.; and Sanofi-Aventis Deutschland GmbH v. Apotex/Novopharm Limited**
Federal Court of Canada (Case No. T-1161-07/T-161-07)
Trial testimony and expert report: lost profits and reasonable royalty involving a patent directed to hypertension treatment.
- **C2 Communications Technologies, Inc. v. Qwest Communications Corp; Global Crossing Telecommunications, Inc.; and Level 3 Communications, LLC**
United States District Court, Eastern District of Texas, Marshall Division (Case No. 2-06CV-241 TJW)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to carrying PSTN calls via Voice over Internet Protocol (VoIP).
- **Siemens AG v. Seagate Technology**
United States District Court, Central District of California, Southern Division (Case No. SA CV 06-788 JVS (ANx))
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to hard disk drive technology.
- **Siemens Medical Solutions USA, Inc. v. Saint-Gobain Ceramics & Plastics, Inc.**
United States District Court, District of Delaware (Case No. 07-190-SLR)
Trial and deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents directed to medical scanner technology.
- **Aventis Pharma, S.A. v. Baxter Healthcare Corp.**
Arbitration
Arbitration hearing and deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to hemophilia treatment.

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- **Every Penny Counts, Inc. v. Bank of America Corp. and Bank of America, N.A.**
United States District Court, Middle District of Florida, Fort Myers Division (Case No. 2:07-CV-42-FTM-29SPC)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to the Keep the Change debit card program.
- **DEKALB Genetics Corp. v. Syngenta Seeds, Inc.; Golden Harvest Seeds, Inc.; Sommer Bros. Seed Co.; JR Robinson Seeds, Inc.; and Garst Seed Co.**
United States District Court, Eastern District of Missouri (Case No. 4:06CV01191MLM)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to genetically modified corn.
- **International Flora Technologies, Ltd. v. Clarins U.S.A.**
United States District Court, District of Arizona (Case No. 2:06-CV-01371-ROS)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to skin care products.
- **Howmedica Osteonics Corp. v. Zimmer, Inc.; Centerpulse Orthopedics, Inc. (formerly known as Sulzer Orthopedics, Inc.); and Smith & Nephew, Inc.**
United States District Court, District of New Jersey (Case No. 05-0897 (WHW))
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to hip implant technology.
- **Elan Pharma International, Ltd. v. Abraxis Bioscience, Inc.**
United States District Court, District of Delaware (Case No. 06-438-GMS)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to nanotechnology drug delivery.
- **Mobile Micromedia Solutions LLC v. Nissan North America, Inc.**
United States District Court, Eastern District of Texas, Texarkana Division (Case No. 505-CV-230)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to automotive entertainment systems.
- **Nichia Corp. v. Seoul Semiconductor, Ltd. and Seoul Semiconductor, Inc.**
United States District Court, Northern District of California (Case No. 3:06-CV-00162-MMC (JCS))
Trial and deposition testimony and expert report: reasonable royalty, unjust enrichment, and prejudgment interest involving patents directed to light emitting diodes (LEDs).
- **NetRatings, Inc. v. WebSideStory, Inc.**
United States District Court, Southern District of New York (Case No. 06-CV-878(LTS)(AJP))
Deposition testimony and expert report: reasonable royalty involving technology directed to internet audience measurement and analysis.
- **Ernest K. Manders, M.D. v. McGhan Medical Corp.**
United States District Court, Western District of Pennsylvania (Case No. 02-CV-1341)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to implantable tissue expanders.
- **Source Search Technologies, LLC v. LendingTree, Inc.; IAC/InterActiveCorp; and ServiceMagic, Inc.**
United States District Court, District of New Jersey (Case No. 2:04-CV-4420)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to online exchanges.

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- **The Boeing Co. v. The United States**
United States Court of Federal Claims (Case No. 00-705 C)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to a process for aging aluminum lithium alloys used for space shuttle external tanks.
- **Bridgestone Sports Co., Ltd. and Bridgestone Golf, Inc. v. Acushnet Co.**
United States District Court, District of Delaware (Case No. 05-132-(JJF))
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to cores, intermediate layers and covers of golf balls.
- **Dyson Technology Ltd. and Dyson, Inc. v. Maytag Corp.**
United States District Court, District of Delaware (Case No. 05-434-GMS)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to upright cyclonic vacuum cleaners.
- **Verizon Services Corp. and Verizon Laboratories, Inc. v. Vonage Holdings Corp. and Vonage America, Inc.**
United States District Court, Eastern District of Virginia (Case No. 1:06CV682)
Trial and deposition testimony and expert report: permanent injunction, lost profits, and reasonable royalty involving patents directed to Voice over Internet Protocol (VoIP) platforms.
- **Hitachi, LTD v. BorgWarner, Inc.**
United States District Court, District of Delaware (Case No. 05-048-SLR)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to automotive cam shaft technology.
- **Innogenetics N.V. v. Abbott Laboratories**
United States District Court, Western District of Wisconsin (Case No. 05-C-0575-C)
Trial and deposition testimony and expert report: reasonable royalty involving a patent directed to HCV genotyping.
- **O2 Micro International v. Monolithic Power Systems, Inc.**
United States District Court, Northern District of California (Case No. 04-02000 CW; 06-02929 CW)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to AC to DC power converter circuits used for backlights.
- **Solvay Solexis, Inc. v. 3M Co.; 3M Innovative Properties Co.; and Dyneon LLC**
United States District Court, District of New Jersey (Case No. 04-06162 (FSH/PS))
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to low temperature fluoroelastomers.
- **Target Technology Co., LLC v. Williams Advanced Materials, Inc., et al.**
United States District Court, Central District of California (Case No. SACV04-1083 DOC (MLGx))
Deposition testimony and expert report: reasonable royalty and design-around alternatives involving a patent directed to silver alloy sputtering targets for DVDs.
- **Metrologic Instruments, Inc. v. Symbol Technologies, Inc.**
United States District Court, District of New Jersey (Case No. 03cv2912 (HAA))
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to bar code scanners.

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- **Eaton Corp. v. ZF Meritor, LLC**
United States District Court, Eastern District of Michigan (Case No. 03-74844)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to truck clutches and transmissions.
- **Meritor Transmission Corp. v. Eaton Corp.**
United States District Court, Western District of North Carolina (Case No. 1:04-CV-178)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to truck transmissions.
- **Monsanto Co. v. Syngenta Seeds, Inc.**
United States District Court, District of Delaware (Case No. 04-305-SLR)
Deposition testimony and expert report: reasonable royalty involving patents directed to genetically modified corn seed.
- **Indiana Mills & Manufacturing, Inc. v. Dorel Industries, Inc.**
United States District Court, Southern District of Indiana (Case No. 1:04-CV-1102)
Deposition testimony and expert report: damages and profits associated with alleged contract breach and patent infringement involving technology directed to automobile child restraint systems.
- **Paice LLC v. Toyota Motor Corp.**
United States District Court, Eastern District of Texas, Marshall Division (Case No. 2-04CV-211) (DF)
Deposition testimony and expert report: reasonable royalty involving patents directed to hybrid-electric powertrain systems.
- **GTECH Corp. v. Scientific Games International**
United States District Court, District of Delaware (Case No. 04-0138)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents directed to a system and method for distributing lottery tickets.
- **WEDECO UV Technologies, Inc. v. Calgon Carbon Corp.**
United States District Court, District of New Jersey (Case No. 01-924)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents directed to treatment of potable water with UV light.
- **Khyber Technologies Corp. v. Casio, Inc; Everex Systems, Inc.; Hewlett-Packard Co.; and Hewlett-Packard Singapore PTE. LTD.**
United States District Court, District of Massachusetts (Case No. 99-CV-12468-GAO)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to audio playback for portable electronic devices.
- **Air Liquide America, L.P. v. P.H. Glatfelter Co.**
United States District Court, Middle District of Pennsylvania (Case No. 1:CV-04-0646)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to the use of ozone bleaching of pulp.
- **Gary J. Colassi v. Cybex International, Inc.**
United States District Court, District of Massachusetts (Case No. 02-668-JEL/JGL)
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to treadmill support decks.

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- **Medinol Ltd. v. Guidant Corp. and Advanced Cardiovascular Systems, Inc.**
United States District Court, Southern District of New York (Case No. 03 Civ.2604 (SAS))
Deposition testimony and expert report: reasonable royalty analysis and prejudgment interest involving patents directed to connectors for coronary and peripheral stents.
- **Donner, Inc. v. American Honda Motor Co.; McDavid Plano-Acura, L.P.; and The Beaumont Co.**
United States District Court, Eastern District of Texas, Texarkana Division (Case No. F:03-CV-253)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to automobile entertainment systems.
- **Nonin Medical, Inc. v. BCI, Inc.**
United States District Court, District of Minnesota, Fourth Division (Case No. 02-668-JEL/JGL)
Deposition testimony and expert report: reasonable royalty, lost profits, and prejudgment interest involving patents directed to finger clip pulse oximeters.
- **Stryker Trauma S.A. and Howmedica Osteonics Corp. v. Synthes (USA)**
United States District Court, District of New Jersey (Case No. 01-CV 3879 (DMC))
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to snap-fit external fixation systems.
- **Michael Foods, Inc. and North Carolina State University v. Rose Acre Farms, Inc.**
United States District Court, Eastern District of North Carolina, Western Division (Case No. 5:02-CV-477-H(3))
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents directed to extended shelf life eggs.
- **Waters Technologies Corp.; Waters Investments, Ltd.; Micromass UK Ltd.; and Micromass, Inc. v. Applera Corp.**
United States District Court, District of Delaware (Case No. 02-1285-GMS)
Deposition testimony and expert report: lost profits, price erosion, reasonable royalty, and prejudgment interest involving a patent directed to mass spectrometer ionization sources.
- **Medtronic Sofamor Danek, Inc. v. Gary K. Michelson, M.D. and Karlin Technology, Inc.**
United States District Court, Western District of Tennessee (Case No. 01-2373 GV)
Trial and deposition testimony and expert report: damages and profits associated with alleged contractual breaches, tortious interference and intentional negligent representations involving spinal implants.
- **Matsushita Electric Industrial Co. Ltd. v. Cinram International, Inc.**
United States District Court, District of Delaware (Case No. 01-882-SLR)
Deposition testimony and expert report: reasonable royalty and prejudgment interest covering patents directed to aspects of bonding substrates together to form optical discs, such as DVDs.
- **Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp. and Schering Corp.**
United States District Court, District of New Jersey (Case No. 96-CV-04047)
Trial and deposition testimony and expert report: lost profits, reasonable royalty, price erosion, and prejudgment interest involving a patent directed to porcine vaccine (PRRS) products.

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- **Arris International and Randall A. Holliday v. John Mezzalingua and Associates, Inc. d/b/a PPC**
United States District Court, District of Colorado (Case No. 01-WM-2061)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to coaxial cable connectors.
- **Promega Corp. v. Applera Corp.; and Lifecodes Corp., and its Subsidiaries Cellmark Diagnostics, Inc.; and Genomics International Corp.**
United States District Court, Western District of Wisconsin (Case No. 01-C-0244-C)
Deposition testimony and expert report: lost profit rate, reasonable royalty, and prejudgment interest involving a patent directed to DNA sequencing technology.
- **Alcon Laboratories, Inc. and Alcon Manufacturing, Ltd. v. Pharmacia Corp.; Pharmacia & Upjohn Co.; and The Trustees of Columbia University in the City of New York**
United States District Court, Southern District of New York (Case No. 01-Civ.2989 (WHP))
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to compositions for treatment of glaucoma.
- **Pharmacia Corp.; Pharmacia AB; Pharmacia Enterprises S.A.; and Pharmacia & Upjohn Co. v. Alcon Laboratories, Inc.**
United States District Court, Southern District of New York (Case No. 01-070-SLR)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to compositions for treatment of glaucoma.
- **Takata Corp. v. AlliedSignal, Inc. and Breed Technologies, Inc.**
United States District Court, District of Delaware (Case No. 98-94-MMS)
Deposition testimony and expert report: reasonable royalty and prejudgment interest covering patents and trade secrets directed to seatbelt retractors.
- **Chiron Corp. v. Genentech, Inc.**
United States District Court, Eastern District of California (Case No. S-00-1252 WBS GGH)
Deposition testimony and expert report: reasonable royalty and prejudgment interest covering a patent directed to the active ingredient in an anti-cancer drug.
- **Greene, Tweed of Delaware, Inc. v. DuPont Dow Elastomers, LLC**
United States District Court, Eastern District of Pennsylvania (Case No. 00-CV-3058)
Trial and deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent covering perfluorelastomeric seals used in semiconductor fabrication applications.
- **Streck Laboratories v. Beckman Coulter, Inc.**
United States District Court, District of Nebraska (Case No. 8:99CV473)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents covering hematology testing equipment.
- **Adobe Systems Inc. v. Macromedia, Inc.**
United States District Court, District of Delaware (Case No. 00-743-JJF)
Trial and deposition testimony and expert report: reasonable royalty involving patents covering computer video and audio software.

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- **Dictaphone Corp. v. Nice Systems, Ltd.**
United States District Court, District of Connecticut (Case No. 3:00-CV-1143)
Deposition testimony and expert report: lost profits, price/margin erosion, reasonable royalty, and prejudgment interest involving patents covering digital logger systems.
- **Metrologic Instruments, Inc. v. PSC, Inc.**
United States District Court, District of New Jersey (Case No. 99-CV-04876)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents covering bar code scanning equipment.
- **Genzyme Corp. v. Atrium Medical Corp.**
United States District Court, District of Delaware (Case No. 00-958-RRM)
Trial testimony and expert report: lost profits and price/margin erosion involving patents covering chest drainage systems.
- **Norian Corp. v. Stryker Corp.**
United States District Court, Northern District of California (Case No. C-01-0016 (WHA))
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent covering bone cement.
- **John Mezzalingua Associates, Inc., d/b/a PPC v. Antec Corp.**
United States District Court, Middle District of Florida (Case No. 3:01-CV-482-J-25 HTS)
Deposition testimony and expert report: disgorgement of profits involving a design patent covering a coaxial cable connection.
- **Rockwell Automation Technologies, LLC v. Spectra-Physics Lasers, Inc. and Opto Power Corp.**
United States District Court, District of Delaware (Case No. 00-589-GMS)
Deposition testimony and expert report: reasonable royalty involving a patent covering a process for producing semiconductor epitaxial films.
- **Tanashin Denk Co., Ltd. v. Thomson Consumer Electronics, Inc.**
United States District Court, Southern Division of Indiana (Case No. IP 99-836-C Y/G)
Trial and deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents covering cassette tape drives.
- **Medtronic Sofamor Danek, Inc. et al. v. Osteotech**
United States District Court, Western Division of Tennessee (Case No. 99-2656-GV)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents covering the instruments and method of inserting a spinal inter-body fusion device.
- **Heimann Systems GmbH v. American Science and Engineering, Inc.**
United States District Court, District of Connecticut (Case No. 00 CV 10276 (WGY))
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to mobile X-ray examining apparatus.
- **Omega Engineering, Inc. v. Cole-Parmer Instrument Co.; Davis Instrument Manufacturing Co., Inc.; Dwyer Instruments, Inc.; and Raytek Corp.**
United States District Court, District of Connecticut (Case Nos. 3:98 CV 00733 (JCH); 3:98 CV 02052 (JCH); and 3:98 CV 02276 (JCH))
Trial and deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents and alleged unfair competitive practices directed to portable infrared thermometers.

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- **Particle Measuring Systems, Inc. v. Rion Co., Ltd.**
United States District Court, District of Colorado (Case No. 99-WM-1433)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to a device and method for optically detecting particles in fluid.
- **The University of Colorado Foundation Inc., et al. v. American Cyanamid Co.**
United States District Court, District of Colorado (Case No. 93-K-1657)
Trial and deposition testimony and expert report: measure and amount of prejudgment interest in a patent infringement, fraud and unjust enrichment case covering prenatal vitamin formulations.
- **Gleason Works v. Oerlikon Geartec AG and Liebherr-America, Inc.**
United States District Court, Western District of New York (Case No. 98-CV-6275 L)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to bevel gear-cutting machines.
- **Amersham Pharmacia v. PE Corp.**
United States District Court, Northern District of California (Case No. C 97-04203-TEH)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to a method of using energy transfer reagents in a DNA sequencing system.
- **Ziarno v. The American Red Cross, et al.**
United States District Court, Northern District of Illinois (Case No. 99 CIV 3430)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to online/internet fundraising.
- **Applied Medical Resources Corp. v. Core Dynamics, Inc.**
United States District Court, Central District of California (Case No. SACV 99-748-DOC (ANx))
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to surgical trocars.
- **Bell Communications Research, Inc. v. Fore Systems, Inc.**
United States District Court, District of Delaware (Case No. 98-586 JJF)
Deposition testimony and expert report: reasonable royalty and prejudgment interest covering patents directed to telecommunications technology (ATM over SONET networks).
- **Newell Operating Co. (EZ Painter Co.) v. Linzer Products Corp.**
United States District Court, Eastern District of Wisconsin (Case No. 98-C-0864)
Deposition testimony and expert report: reasonable royalty and prejudgment interest covering a patent directed to a method for manufacturing polypropylene paint roller covers.
- **Dow Chemical Co. v. Sumitomo Chemical Co., Ltd. and Sumitomo Chemical America, Inc.**
United States District Court, Eastern District of Michigan (Case No. 96-10330-BC)
Deposition testimony and expert report: reasonable royalty and prejudgment interest covering a patent directed to a method for manufacturing cresol epoxy novalac resins used in integrated circuit encapsulation.
- **Insight Development Corp. v. Hewlett-Packard Co.**
United States District Court, Northern District of California (Case No. C 98 3349 CW)
Deposition testimony and expert report: damages and profits associated with alleged contract breaches, patent, copyright and trade secret misappropriation/infringement and unfair competition involving digital image processing and transmission, including that over the internet.

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- **Bristol-Myers Squibb Co. v. Rhone-Poulenc Rorer Inc. and Centre National De La Recherche Scientifique**
United States District Court, Southern District of New York (Case No. 95 Civ. 8833)
Deposition testimony and expert report: reasonable royalty covering a patent directed to semi-synthetic processes for manufacturing an anti-cancer drug.
- **Pactiv Corp. v. S.C. Johnson & Son, Inc.**
United States District Court, Northern District of Illinois (Case No. 98 C 2679)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to zipper closure mechanisms for home storage bags.
- **Dr. Harry Gaus v. Conair Corp.**
United States District Court, Southern District of New York (Case No. 94-5693 (KTD) (FM))
Trial and deposition testimony and expert report: reasonable royalty and prejudgment interest covering a patent directed to hazard prevention devices used with electrical hair dryers.
- **Neogen Corp. v. Vicam, L.P., et al.**
United States District Court, Middle District of Florida (Case No. 97-405-CIV-T-23B)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest covering a patent and a variety of tort claims directed to aflatoxin testing equipment.
- **Surety v. Entrust**
United States District Court, Eastern District of Virginia (Case No. 99-203-A)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest covering a patent directed to digital time stamping.
- **Sofamor Danek Holdings, Inc., et al. v. United States Surgical Corp., et al.**
United States District Court, Western District of Tennessee (Case No. 98-2369 GA)
Trial and deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent covering the method of inserting a spinal inter-body fusion device.
- **Molten Metal Equipment Innovation, Inc. v. Metaullics**
United States District Court, Northern District of Ohio (1:97-CV2244)
Trial testimony and expert report: lost profits, reasonable royalty, and prejudgment interest covering a patent directed to submersible molten metal pumps.
- **AcroMed Corp. v. Sofamor Danek Group, Inc.**
United States District Court, Northern District of Ohio (Case No. 1:93-CV01184)
Trial and deposition testimony and expert report: lost profits and prejudgment interest involving patents directed to spinal implant devices.
- **BIC Corp. v. Thai Merry Co., Ltd.**
United States District Court, Central District of California (Case No. 98 CIV. 2113 (DLC))
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to disposable cigarette lighters.
- **Syncsort Inc. v. Michael Wagner; Cambridge Algorithm; ICF Kaiser Intl. Inc., et al.**
United States District Court, Northern District of Georgia (Case No. 1:93-CV-2247-JEC)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to data sorting software.

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- **Shell Oil Co. v. ICI Americas, Inc. and P.E.T Processors, LLC**
United States District Court, Eastern District of Louisiana (Case No. 97-3526 Section “K”)
Deposition testimony and expert report: lost profits and reasonable royalty involving a patent directed to a process to manufacture solid stated polyethylene naphthalene.
- **Pall Corp. v. Hemasure Inc. and Lydall, Inc.**
United States District Court, Eastern District of New York (Case No. CV-96-436 (TCP/ETB), Case No. 96-5620 (LDW/VVP))
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents directed to prestorage leukodepletion devices.
- **Mentor H/S, Inc. v. Medical Device Alliance, Inc.; Lysonix, Inc.; and Misonix, Inc.**
United States District Court, Central District of California (Case No. CV97-2431 WDK (BQRx))
Trial and deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to ultrasonic liposuction.
- **Hyundai Electronics Industries Co., Ltd. v. NEC Corp. and NEC Electronics, Inc.**
United States District Court, Eastern District of Virginia (Case No. 97-2030A, Case No. 97-2031A, Case No. 98-118-A)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to semiconductor technology.
- **Hitachi, LTD. v. Samsung Display Devices Co., LTD.; Samsung Display Devices, Inc.; Samsung Electronics Co., LTD.; Samsung Electronics America, Inc.; and Office Depot, Inc.**
United States District Court, Eastern District of Virginia (Case No. 97-1988-A)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving patents directed to various aspects of cathode ray tubes.
- **Stairmaster Sports/Medical Products, a Limited Partnership v. Groupe Procycle, Inc. and Procycle USA, Inc.**
United States District Court, District of Delaware (Case No. 97-396 MMS)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to stair climbing fitness equipment.
- **Angelo Mongiello’s Children, LLC v. Pizza Hut, Inc.**
United States District Court, Eastern District of New York (Case No. 95 CV 4601)
Deposition testimony and expert report: reasonable royalty and prejudgment interest involving a patent directed to a method for forming pizza shells.
- **BTG v. Magellan Corp.; BTG v. Trimble Navigation**
United States District Court, Eastern District of Pennsylvania (Case No. 96-CV-7551/Case No. 96-CV-5084 (HB))
Deposition testimony and expert reports: reasonable royalty, prejudgment interest, value of inventory on hand, preparation and investments made and business commenced (as of patent reissuance) involving a patent directed to secret or secure communications technology employed in global positioning system products.
- **Micro Chemical, Inc. v. Lextron, Inc.**
United States District Court, District of Colorado (Case No. 88-Z-499)
Trial and deposition testimony and expert report: lost profits, price erosion, reasonable royalty, and prejudgment interest involving a patent directed to feed additive weigh/mix dispensing machines.

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- **Thai Merry Co., Ltd.; Honson Marketing Group, Inc.; and Calico Brands, Inc. v. BIC Corp.**
United States District Court, Central District of California (Case No. 96-5256 WJR (BQRx))
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents directed to child-resistant disposable cigarette lighters.
- **Radco, Inc. v. Shell Oil Co.; Foster Wheeler USA Corp.; Lyondell-Citgo Refining Co., LLC; Petro-Chem Development Co. Inc.; and Marathon Oil Co.**
United States District Court, Northern District of Oklahoma (Case No. 93-C 1102)
Deposition testimony and expert report: reasonable royalty involving a patent directed to coker heater refinery equipment.
- **Beloit Corp. v. Valmet Corp., et al.**
United States District Court, Western District of Wisconsin (Case No. 96-C-0087-C)
Trial testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents directed to the dryer section of paper making machines.
- **Burke, Inc. v. Everest & Jennings, Inc. et al./Burke, Inc. v. Invacare Corp.**
United States District Court, California Central District (Case No. 89-2613 (KMW)/Case No. 90-787 (KMW))
Trial and deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest over a patent directed to three wheel motorized scooter technology.
- **Bauer Inc. v. Rollerblade, Inc.**
United States District Court, Eastern District of Virginia (Case No. 96-952-A)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to a hybrid stitched and molded skate boot design.
- **Mettler - Toledo A.G. v. Denver Instrument Co., et al.**
United States District Court, Eastern District of Virginia (Case No. 95-1055-A)
Deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving patents directed to analytical and precision balances.
- **Bristol-Myers Squibb Co. v. Abbott Laboratories**
United States District Court, Southern District of Indiana (Case No. EV 94-56-C)
Trial and deposition testimony and expert report: reasonable royalty involving a patent directed to a guiding device used in enteral delivery set assemblies.
- **Crown Equipment Corp. v. The Raymond Corp.**
United States District Court, Northern District of Ohio (Case No. 3:93CV7356)
Trial and deposition testimony and expert report: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to lift truck technology.
- **Mitsubishi Kasei Corp.; and Mitsubishi Kasei America, Inc. v. Virgle Hedgcoth; and Mertec Licensing Technology**
United States District Court, Northern District of California (Case No. 94-1971 SAW (JSB))
Deposition testimony and expert report: reasonable royalty involving a patent directed to sputtered rigid disks used in personal computers.
- **Travelers Express Co. Inc. v. The Standard Register Co.**
United States District Court, District of Minnesota (Case No. 4-93-436)
Deposition testimony and expert report: lost profits, reasonable royalty, patent misuse, and prejudgment interest involving patents directed to money order dispensers.

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- **Dow Chemical Co. v. The United States**

Court of Federal Claims (Case No. 19-83C)

Trial and deposition testimony: measure and amount of delay compensation in an eminent domain case over the taking of a patent directed to the back - filling of abandoned coal mines.

Patent Cases – Injunctive Relief

- **Biogen International GmbH and Biogen MA, Inc. v. Amneal Pharmaceuticals LLC**

United States District Court, District of Delaware (Cases 17-cv-823-LPS (Consolidated); 17-cv-00875-UNA (Sawai USA, Inc. and Sawai Pharmaceutical Co., Ltd.); 17-cv-00847 (Shilpa Medicare Limited); 17-cv-00954-UNA and 19-cv-00333-UNA (Zydus Pharmaceuticals USA, Inc.); 17-cv-00824-UNA (Aurobindo Pharma USA, Inc. and Aurobindo Pharma USA LLC); 17-cv-00825-UNA and 19-cv-00211-UNA (Hetero USA, Inc., Hetero Labs Limited Unit-III, and Hetero Labs Limited); 17-cv-00845-UNA (MSN Laboratories Private Ltd. and MSN Pharmaceuticals, Inc.); and 17-cv-00827-UNA and 17-cv-00874-UNA (Prinston Pharmaceutical, Inc. and Sandoz, Inc.))

Trial and deposition testimony and expert report: commercial success and injunctive relief covering patents directed to oral medication for the treatment of multiple sclerosis.

- **Biogen International GmbH and Biogen MA, Inc. v. Mylan Pharmaceuticals, Inc.**

United States District Court, Northern District of West Virginia (Case No. 17-cv-00116-IMK)

Deposition testimony and expert report: commercial success and injunctive relief covering patents directed to oral medication for the treatment of multiple sclerosis.

- **BASF Plant Science, LP v. Commonwealth Scientific and Industrial Research Organisation; and Commonwealth Scientific and Industrial Research Organisation, Grains Research and Development, Corp., and Nuseed Pty Ltd. v. BASF Plant Science, LP and Cargill, Inc.**

United States District Court, Eastern District of Virginia (Case No. 17-cv-503-HCM)

Trial and deposition testimony and expert report: reasonable royalty damages and injunctive relief covering patents directed to the production of plant-derived omega-3 oils.

- **Fresenius Kabi USA, LLC v. Fera Pharmaceuticals, LLC and Oakwood Laboratories, LLC**

United States District Court, District of New Jersey (Case No. 15-03654-KM-MAH)

Deposition testimony and expert declarations: antitrust liability and damages; commercial success and preliminary injunctive relief involving patents directed to injectable drug treatment of myxedema coma.

- **Dominion Resources, Inc., and Virginia Electric and Power Company v. Alstom Grid, Inc.**

United States District Court, Eastern District of Pennsylvania

Trial and deposition testimony and expert report: permanent injunction involving patents directed to a system and process that dynamically samples smart meters in order to achieve voltage optimization.

- **Integra Lifesciences Corporation, Integra Lifesciences Sales, LLC, Confluent Surgical, Inc., and Incept, LLC v. Hyperbranch Medical Technology, Inc.**

United States District Court, District of Delaware (Case No. 15-cv-00819)

Trial and deposition testimony and expert reports: lost profits, price erosion, reasonable royalty, prejudgment interest, preliminary relief, and commercial success involving patents directed to cranial and spinal dural repair sealants.

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- **Antares Pharma, Inc. v. Medac Pharma, Inc., Medac GmbH, Becton Dickinson France S.A.S., and Becton, Dickinson and Company**
United States District Court, District of Delaware (C.A. No. 14-270-SLR)
Deposition testimony and expert report: irreparable harm, balance of hardships, and public interest involving patents directed to methotrexate autoinjector products.
- **Delavau, LLC v. J.M. Huber Corporation and J.M. Huber Micropowders Inc.**
United States District Court, District of New Jersey (Case No. 12-05378 (ES)(SCM))
Deposition testimony and expert declaration: preliminary injunctive relief involving patents directed to dietary calcium supplements.
- **Dyson Technology Limited and Dyson, Inc. v. Cornucopia Products, LLC**
United States District Court, District of Arizona (Case No. 2:12-cv-00924-ROS)
Hearing testimony and expert declaration: irreparable harm involving patents directed to bladeless fans.
- **Novozymes A/S and Novozymes North America, Inc. v. Danisco A/S; Genecor International Wisconsin, Inc.; Danisco US Inc.; and Danisco USA Inc.**
United States District Court, Western District of Wisconsin (Case No. 10-CV-251)
Trial and deposition testimony and expert report and expert declaration: lost profits, reasonable royalty, prejudgment interest and irreparable harm involving a patent directed to alpha-amylases used for fuel ethanol.
- **LifeWatch Services, Inc. and Card Guard Scientific Survival, LTD. v. Medicomp, Inc. and United Therapeutics Corp.**
United States District Court, Middle District of Florida, Orlando Division (Case No. 6:09-cv-1909-Orl-31DAB)
Hearing and deposition testimony and expert declaration: preliminary injunctive relief involving patents directed to ambulatory arrhythmia monitoring solutions.
- **Verizon Services Corp. and Verizon Laboratories, Inc. v. Vonage Holdings Corp. and Vonage America, Inc.**
United States District Court, Eastern District of Virginia (Case No. 1:06CV682)
Trial and deposition testimony and expert report: permanent injunction, lost profits and reasonable royalty involving patents directed to Voice over Internet Protocol (VoIP) platforms.
- **Riverwood International Corp. v. MeadWestvaco Corp.**
United States District Court, Northern District of Georgia (Case No. 1:03-CV-1672 (TWT))
Deposition testimony and expert report: irreparable harm involving a patent directed to 2x6 beverage cartons.

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Patent Cases – Commercial Success

- **Otsuka Pharmaceutical Co., Ltd. Inc. and H. Lundbeck A/S v. Ajanta Pharma Ltd.; Alembic Pharmaceuticals Ltd.; Alembic Pharmaceuticals, Inc.; Alkem Laboratories Ltd.; Amneal Pharmaceuticals LLC; Amneal Pharmaceuticals Company GmbH; Raks Pharma Pvt. Ltd.; Apotex, Inc.; Apotex Corp.; Apotex Pharmachem, Inc.; Signa S.A. de C.V.; Aurobindo Pharma Ltd.; Aurobindo Pharma USA, Inc.; Hetero Labs Ltd.; Hetero Labs Ltd. Unit-V; Hetero USA, Inc.; Hetero Drugs Ltd.; Honour Lab Ltd.; Lupin Limited; Lupin Pharmaceuticals, Inc.; Macleods Pharmaceuticals Ltd.; Macleods Pharma USA, Inc.; MSN Laboratories Pvt. Ltd.; MSN Pharmaceuticals, Inc.; Optimus Pharma Pvt. Ltd.; Princeton Pharmaceutical, Inc.; Sandoz, Inc.; Teva Pharmaceuticals USA, Inc.; Zenara Pharma Private Ltd.; Biophore India Pharmaceuticals Private Ltd.; Zydus Pharmaceuticals (USA), Inc.; and Cadila Healthcare Ltd.**
United States District Court, District of Delaware (Case No. 19-1938-LPS)
Deposition testimony and expert reports: commercial success covering patents directed to the treatment of major depressive disorder and schizophrenia.
- **Bial - Portela & CA S.A., Bial - Holding, S.A., and Sunovion Pharmaceuticals Inc. v. Alkem Laboratories Limited and S&B Pharma, Inc.; Bial - Portela & CA S.A., Bial - Holding, S.A., and Sunovion Pharmaceuticals Inc. v. Apotex Inc. and Apotex Corp.; Bial - Portela & CA S.A., Bial - Holding, S.A., and Sunovion Pharmaceuticals Inc. v. Jubilant Life Sciences Limited, Jubilant Pharma Limited, Jubilant Generics Limited, Jubilant Life Sciences (USA) Inc., Jubilant Cadista Pharmaceuticals Inc., and Jubilant Pharmova Limited**
United States District Court, District of Delaware (Case Nos. 20-786-CFC-CJB; 20-785-CFC-CJB; 20-783-CFC-CJB)
Trial and deposition testimony and expert report: commercial success involving patents directed to the treatment of partial-onset seizures.
- **Genzyme Corporation and The Regents of the University of Michigan v. Apotex, Inc., Apotex Corp., Dr. Reddy's Laboratories, Inc., Dr. Reddy's Laboratories, Ltd., and Aizant Drug Research Solutions Private Ltd.**
United States District Court, District of Delaware (Case No. 1:18-cv-01795 (CFC))
Deposition testimony and expert report: commercial success involving patents directed to the treatment of Gaucher disease.
- **Baxalta Incorporated, Baxalta US Inc., and Nektar Therapeutics v. Bayer Healthcare LLC**
United States District Court, District of Delaware (Case No. 17-1316-RGA)
Deposition testimony and expert report: commercial success involving patents directed to the treatment of hemophilia.
- **Biogen International GmbH and Biogen MA, Inc. v. Amneal Pharmaceuticals LLC**
United States District Court, District of Delaware (Cases 17-cv-823-LPS (Consolidated); 17-cv-00875-UNA (Sawai USA, Inc. and Sawai Pharmaceutical Co., Ltd.); 17-cv-00847 (Shilpa Medicare Limited); 17-cv-00954-UNA and 19-cv-00333-UNA (Zydus Pharmaceuticals USA, Inc.); 17-cv-00824-UNA (Aurobindo Pharma USA, Inc. and Aurobindo Pharma USA LLC); 17-cv-00825-UNA and 19-cv-00211-UNA (Hetero USA, Inc., Hetero Labs Limited Unit-III, and Hetero Labs Limited); 17-cv-00845-UNA (MSN Laboratories Private Ltd. and MSN Pharmaceuticals, Inc.); and 17-cv-00827-UNA and 17-cv-00874-UNA (Princeton Pharmaceutical, Inc. and Sandoz, Inc.))
Trial and deposition testimony and expert report: commercial success and injunctive relief covering patents directed to oral medication for the treatment of multiple sclerosis.

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- **Biogen International GmbH and Biogen MA, Inc. v. Mylan Pharmaceuticals, Inc.**
United States District Court, Northern District of West Virginia (Case No. 17-cv-00116-IMK)
Deposition testimony and expert report: commercial success and injunctive relief covering patents directed to oral medication for the treatment of multiple sclerosis.
- **Mylan Pharmaceuticals, Inc. v. Biogen MA, Inc.**
The United States Patent and Trademark Office (Case No. IPR2018-01403)
Deposition testimony and expert report: commercial success covering patents directed to oral medication for the treatment of multiple sclerosis.
- **Teva Pharmaceuticals International GmbH, Cephalon, Inc., and Eagle Pharmaceuticals, Inc. v. Apotex, Inc., Apotex Corp., Fresenius Kabi USA, LLC, Mylan Laboratories Ltd., and Slayback Pharma Limited Liability Company**
United States District Court, District of Delaware (Case No. 17-cv-1154-CFC)
Trial and deposition testimony and expert report: commercial success covering patents directed to an injectable chemotherapy drug for the treatment of blood cancer.
- **Astellas Pharma, Inc., Astellas US LLC, Astellas Pharma US, Inc., Medivation LLC, Medivation Prostate Therapeutics LLC, Pfizer, Inc., and The Regents of the University of California v. Actavis Laboratories FL, Inc., Actavis LLC, Apotex, Inc., Apotex Corp., Zydus Pharmaceuticals (USA), Inc., Cadila Healthcare Limited, Roxane Laboratories, Inc., West-Ward Pharmaceuticals Corp., and West-Ward Pharmaceuticals International Limited**
United States District Court, District of Delaware (Case No. 16-cv-1120)
Deposition testimony and expert report: commercial success involving patents directed to the treatment of prostate cancer.
- **Valeant Pharmaceuticals International, Inc., Salix Pharmaceuticals, Inc., Progenics Pharmaceuticals, Inc., and Wyeth LLC v. Actavis Laboratories FL, Inc.**
United States District Court, District of New Jersey (Case No. 2:16-cv-09038 (SRC)(CLW))
Deposition testimony and expert report: commercial success covering patents directed to an oral treatment of opioid-induced constipation (OIC) indications.
- **Nichia Corporation v. Vizio, Inc.**
United States District Court, Central District of California (Case No. 8:16-cv-00545)
Deposition testimony and expert report: reasonable royalty damages and commercial success involving patents directed to light emitting diodes (LEDs).
- **Valeant Pharmaceuticals International, Inc., Salix Pharmaceuticals, Inc., Progenics Pharmaceuticals, Inc., and Wyeth LLC v. Mylan Pharmaceuticals, Inc., Mylan Laboratories Ltd., Mylan, Inc., and Actavis LLC**
United States District Court, District of New Jersey (Case No. 2:15-08180 (SRC)(CLW))
Deposition testimony and expert report: commercial success covering patents directed to an intravenous treatment of opioid induced constipation (OIC) indications.
- **Eli Lilly and Company v. Teva Pharmaceuticals USA, Inc.**
United States District Court, Southern District of Indiana, Indianapolis Division (Case No. 16-cv-596)
Deposition testimony and expert report: commercial success covering a patent directed to treatment of postmenopausal osteoporosis.

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- **Integra Lifesciences Corporation, Integra Lifesciences Sales, LLC, Confluent Surgical, Inc., and Incept, LLC v. Hyperbranch Medical Technology, Inc.**
United States District Court, District of Delaware (Case No. 15-cv-00819)
Trial and deposition testimony and expert reports: lost profits, price erosion, reasonable royalty, prejudgment interest, preliminary relief, and commercial success involving patents directed to cranial and spinal dural repair sealants.
- **VIVUS, Inc. v. Actavis Laboratories FL, Inc.**
United States District Court, District of New Jersey (Case No. 14-cv-3786-SRC-CLW; 15-cv-1636-SRC-CLW; and 15-CV-02693-SRC-CLW)
Deposition testimony and expert reports: commercial success involving patents directed to an immediate release/extended release combination drug used for chronic weight management.
- **Fresenius Kabi USA, LLC v. Fera Pharmaceuticals, LLC and Oakwood Laboratories, LLC**
United States District Court, District of New Jersey (Case No. 15-03654-KM-MAH)
Deposition testimony and expert declarations: antitrust liability and damages; commercial success and preliminary injunctive relief involving patents directed to injectable drug treatment of myxedema coma.
- **In the Matter of Certain Magnetic Data Storage Tapes and Cartridges Containing the Same (Sony Corporation, Sony Corporation of America, and Sony Electronics, Inc. (Respondents))**
United States International Trade Commission (Investigation No. 337-TA-1012)
Trial and deposition testimony and expert report: economic evaluation of FRAND, commercial success, bond, remedy, domestic industry, and public interest issues involving patents directed to certain magnetic data storage tapes and cartridges.
- **Noven Pharmaceuticals, Inc. v. Actavis Laboratories UT, Inc.**
United States District Court, District of Delaware (Case No. 15-249 (LPS))
Trial and deposition testimony and expert report: commercial success involving patents directed to an estrogen therapy patch.
- **Sebela International, Ltd. v. Actavis Laboratories FL, Inc., Actavis Pharma, Inc., Andrx Corp., and Actavis, Inc.; Sebela International Ltd. v. Princeton Pharmaceutical, Inc., Solco Healthcare U.S., LLC, and Huahai US, Inc.**
United States District Court, District of New Jersey (Case No. 14-cv-06414 (CCC-JBC) and 14-cv-07400 (CCC-JBC); consolidated with Case No. 15-cv-05308)
Trial and deposition testimony and expert report: commercial success involving patents directed to a non-hormonal product indicated for the treatment of moderate to severe vasomotor symptoms (VMS) associated with menopause.
- **Meda Pharmaceuticals, Inc. and Cipla, Ltd. v. Apotex, Inc. and Apotex Corp.**
United States District Court, District of Delaware (Case No. 14-1453-LPS)
Trial and deposition testimony and expert declaration: commercial success involving patents directed to a combination formulation drug used to treat seasonal allergic rhinitis.
- **Arctic Cat, Inc., v. Polaris Industries, Inc.**
The United States Patent and Trademark Office (Cases IPR2015-01781; IPR2015-01783)
Deposition testimony and expert declaration: commercial success involving patents directed to side-by-side all-terrain vehicles.

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- **Innopharma Inc., Mylan Pharmaceuticals, Inc., et al. v. Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp.**
The United States Patent and Trademark Office (Case Nos. IPR2015-00902 and IPR2015-00903)
Deposition testimony and expert declaration: commercial success involving patents directed to nonsteroidal anti-inflammatory drugs (NSAIDs) used to treat post-cataract surgery inflammation and pain.
- **Lupin Ltd. and Lupin Pharmaceuticals, Inc. v. Senju Pharmaceutical Co., Ltd.**
The United States Patent and Trademark Office (Case Nos. IPR2015-01097; IPR2015-01105; IPR2015-01099; and IPR2015-01100)
Deposition testimony and expert declaration: commercial success involving patents directed to nonsteroidal anti-inflammatory drugs (NSAIDs) used to treat post-cataract surgery inflammation and pain.
- **Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp. v. Innopharma Inc., Lupin Pharmaceuticals, Inc., et al.**
United States District Court, District of New Jersey (Case Nos. 14-cv-00667-JBS-KMW; 14-cv-04149-JBS-KMW; 14-cv-05144-JBS-KMW; 15-cv-00335-JBS-KMW; 14-cv-06893-JBS-KMW; and 15-cv-03240-JBS-KMW)
Deposition testimony and expert declaration: commercial success involving patents directed to nonsteroidal anti-inflammatory drugs (NSAIDs) used to treat post-cataract surgery inflammation and pain.
- **Arctic Cat, Inc., v. Polaris Industries, Inc.**
The United States Patent and Trademark Office (Case IPR2014-01427)
Deposition testimony and expert declaration: commercial success involving patents directed to side-by-side all-terrain vehicles.
- **Intendis GmbH, Intraser GmbH & Co. KG and Bayer Healthcare Pharmaceuticals Inc., v. Glenmark Generics Ltd. and Glenmark Generics Inc., USA.**
United States District Court, District of Delaware (Case No. 13-cv-421-SLR)
Trial and deposition testimony and expert report: commercial success involving a patent directed to the treatment of certain skin diseases.
- **Everlight Electronics Co. Ltd., and Emcore Corporation v. Nichia Corporation and Nichia America Corporation v. Everlight Americas, Inc.**
United States District Court, Eastern District of Michigan, Southern Division (Case No. 4:12-cv-11758 GAD-MKM)
Trial and deposition testimony, expert report and declaration: commercial success, lost profits, reasonable royalty, and prejudgment interest involving patents directed to LEDs.
- **Bayer Healthcare Pharmaceuticals, Inc. and Dow Pharmaceutical Sciences, Inc. v. River's Edge Pharmaceuticals, LLC, Teresina Holdings, LLC, Medical Products Laboratories, Inc. and Stayma Consulting Services, LLC**
United States District Court, Northern District of Georgia, Atlanta Division (Case No. 11-cv-01634-RLV)
Deposition testimony and expert report: commercial success involving a patent directed to the treatment of certain skin diseases.

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- **JDS Therapeutics, LLC and Nutrition 21, LLC v. Pfizer Inc., Wyeth LLC, Wyeth Consumer Healthcare Ltd., and Wyeth Consumer Healthcare LLC**
United States District Court, Southern District of New York (Case No. 1:12-cv-09002-JSR)
Deposition testimony and expert report: commercial success, reasonable royalty, and unjust enrichment involving patents and trade secrets directed to the use of chromium picolinate in multi-vitamins.
- **Ferring, B.V. v. Watson Laboratories, Inc. – Florida, Apotex Inc., and Apotex Corp.**
United States District Court, District of Nevada (Case Nos. 3:11-cv-00481-RCJ-VPC, 3:11-cv-00485-RCJ-VPC, 3:11-cv-00853-RCJ-VPC, 3:11-cv-00854-RCJ-VPC, 2:12-cv-01935-RCJ-VPC, and 2:12-cv-01941-RCJ-VPC)
Deposition testimony and expert report: commercial success involving patents directed to the treatment of menorrhagia.
- **Medicis Pharmaceutical Corporation; Dow Pharmaceutical Sciences, Inc.; and Alyzan, Inc. v. Actavis Mid Atlantic LLC**
United States District Court, District of Delaware (Case No. 11-CV-409)
Deposition testimony and expert report: commercial success involving a patent directed to delivery vehicles for treatment of dermatological disorders.
- **Galderma Laboratories, L.P.; Galderma S.A.; and Galderma Research & Development, S.N.C. v. Tolmar Inc.; and Actavia Mid Atlantic LLC**
United States District Court, District of Delaware (Case No. 10-cv-45 (LPS))
Trial and deposition testimony and expert report: commercial success involving a patent directed to treatment of dermatological disorders.
- **Pronova Biopharma Norge AS v. Teva Pharmaceuticals USA, Inc.; Apotex Corp. and Apotex Inc.; Par Pharmaceutical, Inc.; and Par Pharmaceutical Companies, Inc.**
United States District Court, District of Delaware (Case Nos. 09-286-SLR/09-304-SLR/09-305-SLR-MPT)
Trial and deposition testimony and expert report: commercial success covering patents directed to treatment of HDL cholesterol and hypertriglyceridemia.
- **Eli Lilly and Company v. Wockhardt Limited and Wockhardt USA, Inc.**
United States District Court, District of Indiana, Indianapolis Division (Case No. 1:08-cv-1547-WTL-TAB)
Deposition testimony and expert report: commercial success covering a patent directed to treatment of depression, anxiety and pain.
- **Acorda Therapeutics, Inc. v. Apotex Inc. and Apotex Corp.**
United States District Court, District of New Jersey (Case No. 2:07-cv-04937-JAG-MCA)
Trial and deposition testimony and expert report: commercial success covering a patent directed to treatment of spasticity.
- **Medeva Pharma Suisse A.G. and Procter & Gamble Pharmaceuticals, Inc. v. Roxane Laboratories, Inc.**
United States District Court, District of New Jersey (Case No. 3:07-CV-05165-FLW-TJB)
Deposition testimony and expert report: commercial success involving a patent directed to treatment of ulcerative colitis.

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- **Otsuka Pharmaceutical Co, Ltd., Inc., et al. v. Sandoz, Inc., et al.**
United States District Court, District of New Jersey (Case No. 07-cv-01000)
Trial and deposition testimony and expert report: commercial success covering a patent directed to the active ingredient of an atypical antipsychotic drug.
- **Janssen-Ortho Inc. and Daiichi Pharmaceutical Co., Ltd v. Novopharm Ltd.**
Federal Court of Canada (Case No. T-2175-04)
Trial testimony (written) and affidavit: commercial success covering a patent directed to the active ingredient of an anti-infective drug.
- **Janssen-Ortho Inc. and Daiichi Pharmaceutical Co., Ltd v. The Minister of Health; and Apotex Inc.**
Federal Court of Canada (Case No. T-1508-05)
Deposition testimony and expert report: commercial success interest involving a patent directed to an anti-infective drug.
- **Ortho-McNeil Pharmaceutical, Inc., et al. v. Mylan Laboratories**
United States District Court, Northern District of West Virginia (Case No. 1:02CV32)
Trial and deposition testimony and expert report: commercial success covering a patent directed to the active ingredient of an anti-infective drug.
- **Elan Corp., PLC v. Andrx Pharmaceuticals, Inc.**
United States District Court, Southern District of Florida (Case No. 98-7164)
Trial and deposition testimony and expert report: commercial success covering a patent directed to controlled release dosing of a nonsteroid anti-inflammatory drug.

Patent Cases – Other

- **MPEG LA, LLC v. Toshiba American Information Systems, Inc.**
Supreme Court of the State of New York, County of New York (Index No. 162716/2015)
Deposition testimony and expert report: contract transfer and patent misuse involving patents directed to digital television standards.
- **Fresenius Kabi USA, LLC v. Fera Pharmaceuticals, LLC and Oakwood Laboratories, LLC**
United States District Court, District of New Jersey (Case No. 15-03654-KM-MAH)
Deposition testimony and expert declarations: antitrust liability and damages; commercial success and preliminary injunctive relief involving patents directed to injectable drug treatment of myxedema coma.
- **Travelers Express Co. Inc. v. The Standard Register Co.**
United States District Court, District of Minnesota (Case No. 4-93-436)
Deposition testimony and expert report: lost profits, reasonable royalty, patent misuse and prejudgment interest involving patents directed to money order dispensers.

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Trade Secret Cases

- **Life Spine, Inc. v. Aegis Spine, Inc.**
United States District Court, Northern District of Illinois, Eastern Division (Case No. 19-cv-7092)
Deposition testimony and expert report: damages associated with lost profits, improper gains, withheld inventory, and prejudgment interest associated with alleged breaches of contract, breach of fiduciary duty, fraudulent inducement, and misappropriation of trade secrets in case involving implant devices used for the treatment of degenerative disc disease.
- **Colony Grill Development, LLC and Fairfield Colony, LLC v. Colony Grill, Inc. and Colony Grill of Stamford, LLC v. Paul Coniglio, Kenneth M. Martin, Cody L. Lee, and Christopher Drury**
United States District Court, District of Connecticut (Case No. 3:20-CV-00213)
Deposition testimony and expert report: damages and disgorgement of profits associated with alleged breach of contract, trademark infringement, unfair competition and unfair trade practices, theft of trade secrets, and breach of good faith and fair dealing in case involving pizza restaurants.
- **CODA Development s.r.o., CODA Innovations s.r.o., and Frantisek Hrabal v. The Goodyear Tire & Rubber Company, Robert Benedict, and Robert Losey**
United States District Court, Northern District of Ohio, Eastern Division (Case No. 5:15-cv-01572-SL)
Deposition testimony and expert report: damages and profits associated with alleged misappropriation of trade secrets involving self-inflating tires.
- **FMC Corporation v. Syngenta Crop Protection, AG; Syngenta Crop Protection, AG v. FMC Corporation**
American Arbitration Association (Case Nos. 01-19-0002-4192 and 01-19-0002-4208)
Arbitration hearing and deposition testimony and expert report: injunctive relief and damages related to alleged misappropriation of trade secrets and breach of contract involving crop herbicides.
- **JELD-WEN, Inc. v. John Ambruz and Global Strategic Partners LLC**
American Arbitration Association (Case No. 01-17-0007-0838)
Hearing and deposition testimony and expert report: damages and reasonable royalty associated with alleged misappropriation of trade secrets and breach of contract involving the production of molded door skins.
- **NCR Corporation v. Pendum LLC and Burroughs, Inc.**
United States District Court, Northern District of Georgia (Case No. 16-cv-04114-SCJ)
Deposition testimony and expert report: damages associated with lost profits, price erosion, unjust enrichment, and economic effects and harm associated with alleged misappropriation of trade secrets, copyright infringement, trademark infringement, breach of contract, and tortious interference with current and prospective business relations in case involving the servicing of automatic teller machines (ATMs).
- **Cedars-Sinai Medical Center v. Quest Diagnostics Inc. and Quest Diagnostics Nichols Institute**
United States District Court, Central District of California, Western Division (Case No. 17-cv-5169-GW-FFM)
Deposition testimony and expert report: damages associated with alleged misappropriation of trade secrets, breach of contract, and patent infringement involving diagnostic testing for irritable bowel syndrome (IBS).

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- **Steves and Sons, Inc. v. JELD-WEN, Inc.**
United States District Court, Eastern District of Virginia, Richmond Division (Case No. 16-cv-00545-REP)
Trial and deposition testimony and expert report: damages, profits, and reasonable royalty associated with alleged misappropriation of trade secrets and tortious interference with employment contracts and severance agreements involving the production of molded door skins.
- **Luminara Worldwide, LLC v. Shenzhen Liown Electronics Co., Ltd. Central Garden and Pet Co., et al.; Shenzhen Liown Electronics Co., Ltd. Central Garden and Pet Co. v. Luminara Worldwide, LLC, et al. ; and Luminara Worldwide, LLC v. Shenzhen Liown Electronics Co., Ltd and Central Garden and Pet Co., et al.**
United States District Court, District of Minnesota (Case Nos. 14-cv-03103 (SRN/FLN) and 15-cv-03028 (SRN/FLN))
Deposition testimony and expert reports: damages associated with alleged patent infringement and breach of contract, and unjust enrichment associated with breach of non-disclosure agreement and use of trade secrets, related to flameless candle technology and distribution.
- **Red Online Marketing Group LP, d/b/a 50onRED v. Revizer Ltd., d/b/a Ad Force Technologies, Ltd., and Revizer Technologies, Ltd.**
United States District Court, Eastern District of Pennsylvania (Case No. 14-1353)
Deposition testimony and expert report: damages associated with alleged misappropriation of trade secrets, breach of contract, and unfair competition (Lanham Act violations) involving internet monetization products.
- **Thomas C. Sisoian v. International Business Machines Corporation (IBM)**
United States District Court, Western District of Texas, Austin Division (Case No. A-14-CA-565-SS)
Deposition testimony and expert report: unjust revenues and profits involving misappropriation of trade secrets over developing, implementing, and integrating complex telecommunication information systems.
- **In the Matter of Certain Sulfentrazone, Sulfentrazone Compositions, and Processes for Making Sulfentrazone (FMC (Complainant))**
United States International Trade Commission (Investigation No. 337-TA-914)
Trial and deposition testimony and expert report: irreparable harm, balance of hardships, and public interest involving a patent directed to a crop herbicide.
- **In the Matter of Certain Opaque Polymers (Organik Kimya (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-883)
Deposition testimony and expert report: injury, independent economic valuation, and bond involving trade secrets used in the production of opaque polymers.
- **MacDermid, Inc. v. Cookson Group, plc, Cookson Electronics, Enthone, Inc., and David North**
United States Superior Court, Judicial District of Waterbury (Case No. x10-cv-09-5014518-d)
Deposition testimony and expert report: royalty and prejudgment interest involving the misappropriation of trade secrets directed to chemicals, materials, and technical services used in a possible corporate acquisition.
- **JDS Therapeutics, LLC and Nutrition 21, LLC v. Pfizer Inc., Wyeth LLC, Wyeth Consumer Healthcare Ltd., and Wyeth Consumer Healthcare LLC**
United States District Court, Southern District of New York (Case No. 1:12-cv-09002-JSR)
Deposition testimony and expert report: commercial success, reasonable royalty, and unjust enrichment involving patents and trade secrets directed to the use of chromium picolinate in multi-vitamins.

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- **E. I. du Pont de Nemours and Company v. Kolon Industries, Inc. and Kolon USA, Inc.**
United States District Court, Eastern District of Virginia, Richmond Division (Case No. 3:09CV58)
Trial and deposition testimony and expert report: unjust enrichment involving misappropriation of trade secrets directed to aramid fiber production.
- **CA, Inc.; Computer Associates Think, Inc.; Platinum Technology International, Inc.; and Platinum Technology IP, Inc., v. Rocket Software, Inc.**
United States District Court, Eastern District of New York (Case No. 07-CV-1476 (ADS)(MLO)
Deposition testimony and expert report: lost profits, unjust enrichment, price erosion and prejudgment interest involving copyrights and trade secrets related to DB2 software tools.
- **Sensormatic Electronics Corp. v. The TAG Co. US LLC; Phenix Label Co.; Dennis Gadonniex**
United States District Court, Southern District of Florida (Case No. 06-81105-Civ-Hurley/Hopkins)
Trial and deposition testimony and expert report: unjust enrichment involving misappropriation of trade secrets directed to loss prevention systems.
- **Cogent Systems, Inc. v. Northrop Grumman Corp.**
California Superior Court, County of Los Angeles, Central District (Case No. BC332199)
Deposition testimony and expert report: reasonable royalty involving misappropriation of trade secrets directed to fingerprint identification technology.
- **Geomatrix, LLC and David A. Potts v. Infiltration Systems, Inc.**
Connecticut Superior Court, District of Middlesex at Middleton (Case No. MMX-CV-05-4004477 S)
Deposition testimony and expert disclosure: reasonable royalty involving misappropriation of trade secrets directed to leach field and septic tank technology.
- **McMahon Marketing v. Toyota Motor Sales**
California Superior Court, County of Los Angeles (Case No. BC317277)
Deposition testimony: damages and profits associated with trade secrets directed to a luxury hotel and automotive partnership.
- **Christopher Karol and Karol Designs, LLC v. Burton Corp.**
United States District Court, District of Vermont (Case No. 1:01-CV-178)
Deposition testimony and expert report: reasonable royalty and disgorgement of profits involving trade secrets and an NDA directed to snowboard boot and binding technology.
- **Takata Corp. v. AlliedSignal, Inc. and Breed Technologies, Inc.**
United States District Court, District of Delaware (Case No. 98-94-MMS)
Deposition testimony and expert report: reasonable royalty and prejudgment interest covering patents and trade secrets directed to seatbelt retractors.
- **Trimless-Flashless Design, Inc. v. Augat, Inc.; Thomas & Betts Corp.; and Tyco International, Ltd.**
United States District Court, Eastern District of Virginia (Case No. CA00-245-A)
Trial and deposition testimony and expert report: damages and profits associated with alleged breach of contract and misappropriation of trade secrets involving metallized particle interconnects used to connect microprocessors with mother boards.
- **Insight Development Corp. v. Hewlett-Packard Co.**
United States District Court, Northern District of California (Case No. C 98 3349 CW)
Deposition testimony and expert report: damages and profits associated with alleged contract breaches, patent, copyright and trade secret misappropriation/infringement and unfair competition involving digital image processing and transmission, including that over the internet.

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- **DSC Communications Corp. v. DGI Technologies, Inc.**
United States District Court, Northern District of Texas (Case No. 3:94-CV-1047)
Trial testimony and expert report: reasonable royalty involving copyrights, trade secrets and unfair competition over telecommunications switching equipment.
- **Wayne State University; Lumigen Inc.; and A. Paul Schapp v. Irena Bronstein and Tropix Inc.**
State of Michigan Circuit Court, County of Wayne and Court of Claims (Case No. 88-804-627 CK/Case No. 88-11871CM)
Deposition testimony and expert report: unjust enrichment and lost profits involving trade secrets directed to chemiluminescence (medical detection) technology.

Trademark Cases

- **Colony Grill Development, LLC and Fairfield Colony, LLC v. Colony Grill, Inc. and Colony Grill of Stamford, LLC v. Paul Coniglio, Kenneth M. Martin, Cody L. Lee, and Christopher Drury**
United States District Court, District of Connecticut (Case No. 3:20-CV-00213)
Deposition testimony and expert report: damages and disgorgement of profits associated with alleged breach of contract, trademark infringement, unfair competition and unfair trade practices, theft of trade secrets, and breach of good faith and fair dealing in case involving pizza restaurants.
- **Constellation Brands U.S. Operations, Inc. v. The Vineyard House LLC**
United States District Court, Northern District of California - Oakland (Case No. 3:20-cv-00238)
Trial testimony and expert report: disgorgement of profits associated with alleged trademark infringement, false association, designation of origin, and advertising, and violations of the Lanham Act and other similar state statutes, involving alleged mislabeling of wine.
- **NCR Corporation v. Pendum LLC and Burroughs, Inc.**
United States District Court, Northern District of Georgia (Case No. 16-cv-04114-SCJ)
Deposition testimony and expert report: damages associated with lost profits, price erosion, unjust enrichment, and economic effects and harm associated with alleged misappropriation of trade secrets, copyright infringement, trademark infringement, breach of contract, and tortious interference with current and prospective business relations in case involving the servicing of automatic teller machines (ATMs).
- **Katherine Dines v. Toys “R” Us-Delaware, Inc.**
United States District Court, District of Colorado (Case No. 12-cv-2279-PAB-KMT)
Deposition testimony and expert report: profits and prejudgment interest associated with trademark infringement involving a line of stuffed animal toys.
- **The Coryn Group II, LLC v. O.C. Seacrets, Inc.**
United States District Court, District of Maryland, Northern Division (Case No. 08-cv-02764-WDQ)
Trial testimony and expert report: profits and damages involving the use of “Secrets” trademark in the leisure resort business.
- **YSL Beauté v. Oscar de la Renta, Ltd.**
American Arbitration Association (Case No. 13 133 01389 08)
Arbitration hearing testimony and expert report: damages associated with alleged breach of contract and trademark infringement involving cosmetics, fragrances and beauty products.

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- **Fishman Transducers, Inc. v. Stephen Paul d/b/a “Esteban” Daystar Productions and HSN Interactive LLC**
United States District Court, District of Massachusetts (Case No. 07-CA-10071 RCL)
Trial and deposition testimony and expert report: damages and profits associated with a trademark directed to guitar transducers.
- **ISP.NET, LLC d/b/a IQuest Internet v. Qwest Communications International, Inc.**
United States District Court, Southern District of Indiana, Indianapolis Division (Case No. IP01-0480 C B/S)
Deposition testimony and expert report: reasonable royalty, disgorgement of profits and prejudgment interest involving a trademark directed to internet service provision.
- **Fuel Clothing Co., Inc. v. Safari Shirt Co. d/b/a Fuel Clothing Co., Inc.**
United States District Court, Western District of Washington at Tacoma (Case No. CO5 5366 KJB))
Deposition testimony and expert report: economic harm involving a trademark directed to sports apparel logos.
- **Alpha International, Inc. v. General Foam Plastics Corp.**
United States District Court, Eastern District of North Carolina (Case No. 4:01-CV-142-H(3))
Deposition testimony and expert report: copyright infringement, trademark infringement, conversion and unjust enrichment involving bowling pin sets and ride-on toys.
- **Fuel TV, Inc. v. Fuel Clothing Co., Inc.**
United States District Court, Central District of California, Western Division (Case No. CV03-8248-ABC-VBKx)
Deposition testimony and expert report: economic harm involving infringement of trademark used in extreme sports applications.
- **AutoNation, Inc. v. Acme Commercial Corp., et al. (CarMax)**
United States District Court, Southern District of Florida (Case No. 96-6141)
Trial and deposition testimony and expert report: reasonable royalty associated with trademark infringement and unfair competition in the auto superstore business.

Copyright Cases

- **ICC Evaluation Service, LLC and International Code Council, Inc. v. International Association of Plumbing and Mechanical Officials, Inc. and IAPMO Evaluation Service, LLC**
United States District Court, District of Columbia (Case No. 1:16-cv-54-EGS-DAR)
Deposition testimony and expert report: lost profits, unjust enrichment, fair use, and irreparable harm associated with alleged copyright infringement involving compliance and evaluation reports for building products and systems.
- **NCR Corporation v. Pendum LLC and Burroughs, Inc.**
United States District Court, Northern District of Georgia (Case No. 16-cv-04114-SCJ)
Deposition testimony and expert report: damages associated with lost profits, price erosion, unjust enrichment, and economic effects and harm associated with alleged misappropriation of trade secrets, copyright infringement, trademark infringement, breach of contract, and tortious interference with current and prospective business relations in case involving the servicing of automatic teller machines (ATMs).

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- **Syngenta Crop Protection, LLC v. Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited**
United States District Court, Middle District of North Carolina (Case No. 1:15-cv-274)
Trial and deposition testimony and expert report: damages and prejudgment interest related to alleged patent and copyright infringement involving crop fungicide.
- **American Society for Testing and Materials d/b/a ASTM International; National Fire Protection Association, Inc.; and American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. v. Public.Resource.org, Inc.**
United States District Court, District of Columbia (Case No. 13-cv-01215-TSC)
Deposition testimony and expert report: harm and public interest involving copyrights and trademarks covering standards incorporated by reference into law.
- **Complex Systems, Inc. v. ABN AMRO Bank N.V.**
United States District Court, Southern District of New York (Case No. 08-cv-7497)
Deposition testimony and expert report: revenues and profits involving copyrighted trade finance software.
- **Shepard Fairey and Obey Giant Art, Inc. v. The Associated Press v. Shepard Fairey; Obey Giant Art, Inc.; Obey Giant LLC; Studio Number One, Inc.; and One 3 Two, Inc.**
United States District Court, Southern District of New York (Case No. 09-01123(AKH))
Deposition testimony and expert report: fair use, damages and profits involving copyrighted photograph of President Obama.
- **CA, Inc.; Computer Associates Think, Inc.; Platinum Technology International, Inc.; and Platinum Technology IP, Inc., v. Rocket Software, Inc.**
United States District Court, Eastern District of New York (Case No. 07-CV-1476 (ADS)(MLO)
Deposition testimony and expert report: lost profits, unjust enrichment, price erosion and prejudgment interest involving copyrights and trade secrets related to DB2 software tools.
- **Alpha International, Inc. v. General Foam Plastics Corp.**
United States District Court, Eastern District of North Carolina (Case No. 4:01-CV-142-H(3))
Deposition testimony and expert report: copyright infringement, trademark infringement, conversion and unjust enrichment involving bowling pin sets and ride-on toys.
- **Insight Development Corp. v. Hewlett-Packard Co.**
United States District Court, Northern District of California (Case No. C 98 3349 CW)
Deposition testimony and expert report: damages and profits associated with alleged contract breaches, patent, copyright and trade secret misappropriation/infringement and unfair competition involving digital image processing and transmission, including that over the internet.
- **First National Bank of Omaha v. Three Dimensions Systems Products, Inc.**
United States District Court, District of Nebraska (Case No. 8:98CV569)
Trial and deposition testimony and expert report: damages and profits associated with an alleged contract breach and copyright infringement involving financial services software.
- **Leslie Atkins v. Benson J. Fischer, et al.**
United States District Court, District of Columbia (Case No. 1:98CV00800)
Deposition testimony and expert report: damages and profits associated with copyright infringement covering beer label and packaging designs.

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- **Wrench LLC v. Taco Bell Corp.**
United States District Court, Southern District of Michigan (Case No. 1:98-CV-45)
Trial and deposition testimony and expert report: unjust enrichment and actual damages involving chihuahua promotional campaign.
- **DSC Communications Corp. v. DGI Technologies, Inc.**
United States District Court, Northern District of Texas (Case No. 3:94-CV-1047)
Trial testimony and expert report: reasonable royalty involving copyrights, trade secrets and unfair competition over telecommunications switching equipment.

Breach of Contract Cases

- **Life Spine, Inc. v. Aegis Spine, Inc.**
United States District Court, Northern District of Illinois, Eastern Division (Case No. 19-cv-7092)
Deposition testimony and expert report: damages associated with lost profits, improper gains, withheld inventory, and prejudgment interest associated with alleged breaches of contract, breach of fiduciary duty, fraudulent inducement, and misappropriation of trade secrets in case involving implant devices used for the treatment of degenerative disc disease.
- **FMC Corporation v. Syngenta Crop Protection, AG; Syngenta Crop Protection, AG v. FMC Corporation**
American Arbitration Association (Case Nos. 01-19-0002-4192 and 01-19-0002-4208)
Arbitration hearing and expert report: valuation and license terms for co-development project covering crop herbicides.
- **LG Display Co. v. Sharp Corporation**
Singapore International Arbitration Centre (SIAC Arbitration No. 435/19/JTA)
Trial testimony and expert reports: damages associated with the alleged breach of contract involving licenses and releases related to liquid-crystal display (LCD) and organic light-emitting diode (OLED) display technologies.
- **Colony Grill Development, LLC and Fairfield Colony, LLC v. Colony Grill, Inc. and Colony Grill of Stamford, LLC v. Paul Coniglio, Kenneth M. Martin, Cody L. Lee, and Christopher Drury**
United States District Court, District of Connecticut (Case No. 3:20-CV-00213)
Deposition testimony and expert report: damages and disgorgement of profits associated with alleged breach of contract, trademark infringement, unfair competition and unfair trade practices, theft of trade secrets, and breach of good faith and fair dealing in case involving pizza restaurants.
- **FMC Corporation v. Syngenta Crop Protection, AG; Syngenta Crop Protection, AG v. FMC Corporation**
American Arbitration Association (Case Nos. 01-19-0002-4192 and 01-19-0002-4208)
Arbitration hearing and deposition testimony and expert report: injunctive relief and damages related to alleged misappropriation of trade secrets and breach of contract involving crop herbicides.

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- **In re: Windstream Holdings, Inc., et al. (Debtors); Windstream Holdings, Inc., et al. v. Charter Communications, Inc. and Charter Communications Operating, LLC**
United States Bankruptcy Court, Southern District of New York (Chapter 11, Case No. 19-22312 (RDD); Adv. Pro. No. 19-08246 (RDD))
Trial and deposition testimony and expert report: lost profits and increased costs associated with alleged violations of the Lanham Act and other similar state statutes, breach of contract, violation of the Bankruptcy Code's automatic stay, and equitable subordination involving alleged false advertising campaign.
- **JELD-WEN, Inc. v. John Ambroz and Global Strategic Partners LLC**
American Arbitration Association (Case No. 01-17-0007-0838)
Hearing and deposition testimony and expert report: damages and reasonable royalty associated with alleged misappropriation of trade secrets and breach of contract involving the production of molded door skins.
- **NCR Corporation v. Pendum LLC and Burroughs, Inc.**
United States District Court, Northern District of Georgia (Case No. 16-cv-04114-SCJ)
Deposition testimony and expert report: damages associated with lost profits, price erosion, unjust enrichment, and economic effects and harm associated with alleged misappropriation of trade secrets, copyright infringement, trademark infringement, breach of contract, and tortious interference with current and prospective business relations in case involving the servicing of automatic teller machines (ATMs).
- **MPEG LA, LLC v. Toshiba American Information Systems, Inc.**
Supreme Court of the State of New York, County of New York (Index No. 162716/2015)
Deposition testimony and expert report: contract transfer and patent misuse involving patents directed to digital television standards.
- **Cedars-Sinai Medical Center v. Quest Diagnostics Inc. and Quest Diagnostics Nichols Institute**
United States District Court, Central District of California, Western Division (Case No. 17-cv-5169-GW-FFM)
Deposition testimony and expert report: damages associated with alleged misappropriation of trade secrets, breach of contract, and patent infringement involving diagnostic testing for irritable bowel syndrome (IBS).
- **Western Enterprises, Inc. v. Buckeye Rubber & Packaging Co.; Freudenberg-NOK General Partnership, a/k/a Freudenberg-NOK Sealing Technologies, Inc.; and International Seal Company, Inc.**
Court of Common Pleas, Cuyahoga County, Ohio (Case No. 16-869179)
Deposition testimony and expert report: damages associated with alleged breaches of contract, duty to indemnify, and negligence related to portable oxygen systems.
- **Luminara Worldwide, LLC v. Shenzhen Liown Electronics Co., Ltd, Central Garden and Pet Co., et al.; Shenzhen Liown Electronics Co., Ltd, Central Garden and Pet Co. v. Luminara Worldwide, LLC, et al. ; and Luminara Worldwide, LLC v. Shenzhen Liown Electronics Co., Ltd and Central Garden and Pet Co., et al.**
United States District Court, District of Minnesota (Case Nos. 14-cv-03103 (SRN/FLN) and 15-cv-03028 (SRN/FLN))
Deposition testimony and expert reports: damages associated with alleged patent infringement and breach of contract, and unjust enrichment associated with breach of non-disclosure agreement and use of trade secrets, related to flameless candle technology and distribution.

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- **Red Online Marketing Group LP, d/b/a 50onRED v. Revizer Ltd., d/b/a Ad Force Technologies, Ltd., and Revizer Technologies, Ltd.**
United States District Court, Eastern District of Pennsylvania (Case No. 14-1353)
Deposition testimony and expert report: damages associated with alleged misappropriation of trade secrets, breach of contract, and unfair competition (Lanham Act violations) involving internet monetization products.
- **Luminara Worldwide, LLC v. Shenzhen Liown Electronics Co., Ltd.**
State of Minnesota District Court, County of Hennepin Fourth Judicial District (Case No. 27-CV-14-16085)
Deposition testimony and expert report: damages associated with alleged breaches of contract and duty of good faith and fair dealing related to agreements to manufacture flameless candles.
- **ABS Holdings, Ltd. and ABS Global, Ltd. v. KT Corporation and KTSAT Corporation**
International Court of Arbitration of the International Chamber of Commerce
Arbitration hearing testimony and expert declaration: damages associated with alleged breaches of contract involving the sale and on-going operations of a satellite.
- **Bayer CropScience AG and Bayer CropScience NV v. Dow AgroSciences LLC, Mycogen Plant Science Inc., Agrigenetics, Inc. d/b/a Mycogen Seeds LLC, and Phytogen Seed Company, LLC**
International Chamber of Commerce (Case No. 18892/VRO /AGF)
Arbitration hearing testimony and expert report: damages associated with alleged breach of contract and patent infringement involving genetically modified seed.
- **Immunomedics Inc. v. Nycomed GmnH (n/k/a Takeda GmbH), Takeda Pharmaceutical Company Limited, and Takeda Pharmaceuticals International, Inc.**
International Center for Dispute Resolution
Arbitration hearing testimony and expert report: diminution of value associated with the delayed/failed development of a monoclonal antibody drug to treat various autoimmune diseases.
- **Avocent Redmond Corp. v. Raritan Americas, Inc.**
United States District Court, Southern District of New York (Case No. 10-cv-6100 (PKC)(JLC))
Deposition testimony and expert report: lost profits, lost royalties, reasonable royalty and prejudgment interest involving a patent and contract directed to software and hardware products and technologies that provide connectivity and centralized management of IT infrastructure through KVM switches.
- **General Assurance of America, Inc. v. Overby-Seawell Company**
United States District Court, Eastern District of Virginia, Alexandria Division (Case No. 1:11CV483)
Deposition testimony and expert report: damages and profits associated with obligations arising from a contract involving specialized insurance products.
- **Frontline Placement Technologies, Inc. v. CRS, Inc.**
United States District Court, Eastern District of Pennsylvania (Case No. 2:07-CV-2457)
Deposition testimony and expert report: lost profits, lost royalties, reasonable royalty and prejudgment interest involving a patent and contract directed to automated substitute fulfillment software.
- **Amkor Technology, Inc. v. Tessera, Inc.**
International Chamber of Commerce, International Court of Arbitration (Case No. 166531/VRO)
Arbitration hearing and deposition testimony and expert report: royalty payments due under a contract directed to semiconductor packaging technology.

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- **Max-Planck-Gesellschaft zur Förderung der Wissenschaften E. V.; Max-Planck-Innovation GmbH; and Alnylam Pharmaceuticals, Inc. v. Whitehead Institute for Biomedical Research; Massachusetts Institute of Technology; and the Board of Trustees of the University of Massachusetts**
United States District Court, District of Massachusetts (Case No. 2009-11116-PBS)
Deposition testimony and expert report: damages and profits associated with contracts covering the transfer and sharing of RNAi technology.
- **YSL Beauté v. Oscar de la Renta, Ltd.**
American Arbitration Association (Case No. 13 133 01389 08)
Arbitration hearing testimony and expert report: damages associated with alleged breach of contract and trademark infringement involving cosmetics, fragrances, and beauty products.
- **IMTEC Imaging LLC v. CyberMed, Inc.**
JAMS Arbitration (Reference No. 1410005418)
Arbitration hearing and deposition testimony and expert report: lost profits and development costs associated with the alleged breach of a contract involving a software license agreement directed to cone beam computed tomography machines used in dental applications.
- **Biosynexus, Inc. v. Glaxo Group Limited and MedImmune, Inc.**
New York Supreme Court, County of New York (Case No. 604485/05)
Deposition testimony and expert report: diminution of value associated with the delayed/failed development of a pediatric anti-infective drug.
- **Indiana Mills & Manufacturing, Inc. v. Dorel Industries, Inc.**
United States District Court, Southern District of Indiana (Case No. 1:04-CV-1102)
Deposition testimony and expert report: damages and profits associated with alleged contract breach and patent infringement involving technology directed to automobile child restraint systems.
- **ETEX Corp. v. Medtronic, Inc.; Medtronic International Limited; and Medtronic Sofamor Danek, Inc.**
CPR Institute for Dispute Resolution
Arbitration hearing and deposition testimony and expert report: lost revenues and profits associated with alleged contractual breaches and antitrust violations involving spinal implant materials.
- **Audiotext International, Ltd. and New Media Group, Inc. v. Sprint Communications Co., L.P.**
United States District Court, Eastern District of Pennsylvania (Case No. 03-CV-2110)
Deposition testimony and expert report: non-delivery damages involving contracts covering resale of telecommunications services.
- **Medtronic Sofamor Danek, Inc. v. Gary K. Michelson, M.D. and Karlin Technology, Inc.**
United States District Court, Western District of Tennessee (Case No. 01-2373 GV)
Trial and deposition testimony and expert report: damages and profits associated with alleged contractual breaches, tortious interference and intentional negligent representations involving spinal implants.
- **Honeywell International, Inc. and GEM Microelectronic Materials LLC v. Air Products and Chemicals, Inc. and Ashland, Inc.**
Delaware Chancery Court, County of New Castle (Case No. 20434-NC)
Trial and deposition testimony and expert report: lost profits associated with alleged contractual breach and tortious interference as well as irreparable harm inquiry involving a strategic alliance to provide electronic chemicals, gases and services to the semiconductor industry.

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- **Christopher Karol; and Karol Designs, LLC v. Burton Corp.**
United States District Court, District of Vermont (Case No. 1:01-CV-178)
Deposition testimony and expert report: reasonable royalty and disgorgement of profits involving trade secrets and an NDA directed to snowboard boot and binding technology.
- **Interactive Return Service, Inc. v. Virginia Polytechnic Institute and State University, et al.**
Circuit Court for the City of Richmond (Case No. LM-870-3)
Deposition testimony: lost profits and lost licensing fees involving contracts to develop interactive/return path communications.
- **City of Hope National Medical Center v. Genentech, Inc.**
Superior Court, State of California, County of Los Angeles (Case No. BC215152)
Deposition testimony and expert report: damages associated with alleged breach of contract involving license fees for use of recombinant DNA technology.
- **Igen International, Inc. v. Roche Diagnostics GmbH**
United States District Court, Southern Division of Maryland (Case No. PJM 97-3461)
Trial and deposition testimony and expert report: damages and profits associated with an alleged breach of contract involving electrochemiluminescent detection technology used in DNA probe and immunoassay kits.
- **Trimless-Flashless Design, Inc. v. Augat, Inc.; Thomas & Betts Corp.; Tyco International, Ltd.**
United States District Court, Eastern District of Virginia (Case No. CA00-245-A)
Trial and deposition testimony and expert report: damages and profits associated with alleged breach of contract and misappropriation of trade secrets involving metallized particle interconnects used to connect microprocessors with mother boards.
- **New Industries Co. (Sudan) Ltd. v. PepsiCo, Inc.**
American Arbitration Association (Case No. 50 T 114 00001 95)
Arbitration hearing testimony and expert report: damages and profits associated with breaches of PepsiCo franchise agreement.
- **Insight Development Corp. v. Hewlett-Packard Co.**
United States District Court, Northern District of California (Case No. C 98 3349 CW)
Deposition testimony and expert report: damages and profits associated with alleged contract breaches, patent, copyright and trade secret misappropriation/infringement and unfair competition involving digital image processing and transmission, including that over the internet.
- **First National Bank of Omaha v. Three Dimensions Systems Products, Inc.**
United States District Court, District of Nebraska (Case No. 8:98CV569)
Trial and deposition testimony and expert report: damages and profits associated with an alleged contract breach and copyright infringement involving financial services software.
- **Computer Aid v. Hewlett-Packard**
United States District Court, Eastern District of Pennsylvania (Case No. (C-96-3085 (MHP))
Deposition testimony and expert report: appropriate discount rate and prejudgment interest rate involving a failed software development contract.
- **Wrench LLC v. Taco Bell Corp.**
United States District Court, Southern District of Michigan (Case No. 1:98-CV-45)
Trial and deposition testimony and expert report: unjust enrichment and actual damages involving chihuahua promotional campaign.

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- **Kabushiki Kaisha Izumi Seiko Seiskusho v. Windmere Corp. et al.**
United States District Court, Southern District of Florida (Case No. 94-0803-CIV-MOORE)
Deposition testimony and expert declaration: lost revenues and lost profits in a breach of contract, fraud and antitrust case involving rotary shavers.

Antitrust Cases

- **Panasonic Corporation v. Getac Technology Corporation and Getac, Inc.**
United States District Court, Central District of California (Case No. 8:19-cv-01118-DOC-DFM)
Deposition testimony and expert reports: monopolization/attempted monopolization counterclaim and design patent damages directed to market for rugged 2-in-1 portable computers.
- **Rambus Inc., v. Micron Technology, Inc.**
California Superior Court, County of San Francisco (Case No. 04-431105)
Deposition testimony and expert report: lost revenues and profits associated with alleged antitrust violations related to DRAM technology.
- **ETEX Corp. v. Medtronic, Inc.; Medtronic International Limited; and Medtronic Sofamor Danek, Inc.**
CPR Institute for Dispute Resolution
Arbitration hearing and deposition testimony and expert report: lost revenues and profits associated with alleged contractual breaches and antitrust violations involving spinal implant materials.
- **Kabushiki Kaisha Izumi Seiko Seiskusho v. Windmere Corp. et al.**
United States District Court, Southern District of Florida (Case No. 94-0803-CIV-MOORE)
Deposition testimony and expert declaration: lost revenues and lost profits in a breach of contract, fraud and antitrust case involving rotary shavers.
- **DSC Communications Corp. v. DGI Technologies, Inc.**
United States District Court, Northern District of Texas (Case No. 3:94-CV-1047)
Trial testimony and expert report: reasonable royalty involving copyrights, trade secrets and unfair competition over telecommunications switching equipment.
- **Travelers Express Co. Inc. v. The Standard Register Co.**
United States District Court, District of Minnesota (Case No. 4-93-436)
Deposition testimony and expert report: lost profits, reasonable royalty, patent misuse and prejudgment interest involving patents directed to money order dispensers.

General Tort Cases

- **Life Spine, Inc. v. Aegis Spine, Inc.**
United States District Court, Northern District of Illinois, Eastern Division (Case No. 19-cv-7092)
Deposition testimony and expert report: damages associated with lost profits, improper gains, withheld inventory, and prejudgment interest associated with alleged breaches of contract, breach of fiduciary duty, fraudulent inducement, and misappropriation of trade secrets in case involving implant devices used for the treatment of degenerative disc disease.

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- **Diamond Resorts U.S. Collection Development, LLC and Diamond Resorts Hawaii Collection Development, LLC v. Pandora Marketing, LLC d/b/a Timeshare Compliance; Intermarketing Media, LLC d/b/a Resort Advisory Group; Slattery, Sobel & Decamp, LLC; Del Mar Law Group, LLP; Carlsbad Law Group, LLP; JL “Sean” Slattery, Esq.; Unlock Legal, APLC; Miranda Dempsey, APLC d/b/a McCroskey Legal; and Miranda McCroskey, Esq.**
United States District Court, Central District of California (Case No. 2:20-cv-05486-DSF-ADS)
Deposition testimony and expert report: damages and disgorgement of profits associated with alleged tortious interference, civil conspiracy, and violations of the Lanham Act and other similar state statutes in case involving timeshare exit services.
- **Colony Grill Development, LLC and Fairfield Colony, LLC v. Colony Grill, Inc. and Colony Grill of Stamford, LLC v. Paul Coniglio, Kenneth M. Martin, Cody L. Lee, and Christopher Drury**
United States District Court, District of Connecticut (Case No. 3:20-CV-00213)
Deposition testimony and expert report: damages and disgorgement of profits associated with alleged breach of contract, trademark infringement, unfair competition and unfair trade practices, theft of trade secrets, and breach of good faith and fair dealing in case involving pizza restaurants.
- **Diamond Resorts U.S. Collection Development, LLC and Diamond Resorts Hawaii Collection Development, LLC v. US Consumer Attorneys, P.A., Henry Portner, Esq., Robert Sussman, Pluto Marketing Inc., 1Planetmedia Inc, Newton Group Transfers, LLC, The Newton Group, ESA LLC, Interval Broker Direct, LLC, Newton Group Exit, LLC, and DC Capital Law Firm, LLP**
United States District Court, Southern District of Florida - Fort Pierce Division (Case No. 9:18-cv-80311)
Deposition testimony and expert report: damages and disgorgement of profits associated with alleged tortious interference, civil conspiracy, and violations of the Lanham Act and other similar state statutes in case involving timeshare exit services.
- **Constellation Brands U.S. Operations, Inc. v. The Vineyard House LLC**
United States District Court, Northern District of California - Oakland (Case No. 3:20-cv-00238)
Trial testimony and expert report: disgorgement of profits associated with alleged trademark infringement, false association, designation of origin, and advertising, and violations of the Lanham Act and other similar state statutes, involving alleged mislabeling of wine.
- **In re: Windstream Holdings, Inc., et al. (Debtors); Windstream Holdings, Inc., et al. v. Charter Communications, Inc. and Charter Communications Operating, LLC**
United States Bankruptcy Court, Southern District of New York (Chapter 11, Case No. 19-22312 (RDD); Adv. Pro. No. 19-08246 (RDD))
Trial and deposition testimony and expert report: lost profits and increased costs associated with alleged violations of the Lanham Act and other similar state statutes, breach of contract, violation of the Bankruptcy Code’s automatic stay, and equitable subordination involving alleged false advertising campaign.
- **NCR Corporation v. Pendum LLC and Burroughs, Inc.**
United States District Court, Northern District of Georgia (Case No. 16-cv-04114-SCJ)
Deposition testimony and expert report: damages associated with lost profits, price erosion, unjust enrichment, and economic effects and harm associated with alleged misappropriation of trade secrets, copyright infringement, trademark infringement, breach of contract, and tortious interference with current and prospective business relations in case involving the servicing of automatic teller machines (ATMs).

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- **Western Enterprises, Inc. v. Buckeye Rubber & Packaging Co.; Freudenberg-NOK General Partnership, a/k/a Freudenberg-NOK Sealing Technologies, Inc.; and International Seal Company, Inc.** *Court of Common Pleas, Cuyahoga County, Ohio (Case No. 16-869179)*
Deposition testimony and expert report: damages associated with alleged breaches of contract, duty to indemnify, and negligence related to portable oxygen systems.
- **General Assurance of America, Inc. v. Overby-Seawell Company**
United States District Court, Eastern District of Virginia, Alexandria Division (Case No. 1:11CV483)
Deposition testimony and expert report: damages and profits associated with obligations arising from a contract involving specialized insurance products.
- **The Osage Tribe of Indians of Oklahoma v. The United States of America**
United States Court of Federal Claims (Case No. 99-550 L (into which is consolidated No. 00-169L))
Deposition testimony and expert declaration: present value interest from unpaid oil royalties.
- **Biosynexus, Inc. v. Glaxo Group Limited; and MedImmune, Inc.**
New York Supreme Court, County of New York (Case No. 604485/05)
Deposition testimony and expert report: diminution of value associated with the delayed/failed development of a pediatric anti-infective drug.
- **Bavarian Nordic A/S and Anton Mayr v. Acambis, Inc.**
United States District Court, District of Delaware (Case No. 05-614-SLR)
Deposition testimony and expert report: unjust enrichment and value of property associated with tortious conversion, unfair trade practices and unfair competition involving proprietary technology directed to vaccines.
- **Alpha International, Inc. v. General Foam Plastics Corp.**
United States District Court, Eastern District of North Carolina (Case No. 4:01-CV-142-H(3))
Deposition testimony and expert report: copyright infringement, trademark infringement, conversion and unjust enrichment involving bowling pin sets and ride-on toys.
- **Medtronic Sofamor Danek, Inc. v. Gary K. Michelson, M.D. and Karlin Technology, Inc.**
United States District Court, Western District of Tennessee (Case No. 01-2373 GV)
Trial and deposition testimony and expert report: damages and profits associated with alleged contractual breaches, tortious interference and intentional negligent representations involving spinal implants.
- **Honeywell International, Inc. and GEM Microelectronic Materials LLC v. Air Products and Chemicals, Inc. and Ashland, Inc.**
Delaware Chancery Court, County of New Castle (Case No. 20434-NC)
Trial and deposition testimony and expert report: lost profits associated with alleged contractual breach and tortious interference as well as irreparable harm inquiry involving a strategic alliance to provide electronic chemicals, gases and services to the semiconductor industry.
- **Interactive Return Service, Inc. v. Virginia Polytechnic Institute and State University, et al.**
Circuit Court for the City of Richmond (Case No. LM-870-3)
Deposition testimony: lost profits and lost licensing fees involving contracts to develop interactive/return path communications.

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- **Omega Engineering, Inc. v. Cole-Parmer Instrument Co.; Davis Instrument Manufacturing Co., Inc.; Dwyer Instruments, Inc.; and Raytek Corp.**
United States District Court, District of Connecticut (Case Nos. 3:98 CV 00733 (JCH), 3:98 CV 02052 (JCH) and 3:98 CV 02276 (JCH))
Trial and deposition testimony and expert report: lost profits, reasonable royalty and prejudgment interest involving patents and alleged unfair competitive practices directed to portable infrared thermometers.
- **The University of Colorado Foundation Inc., et al. v. American Cyanamid Co.**
United States District Court, District of Colorado (Case No. 93-K-1657)
Trial and deposition testimony and expert report: measure and amount of prejudgment interest in a patent infringement, fraud and unjust enrichment case covering prenatal vitamin formulations.
- **Hunter Group, Incorporated v. Susan Smith, et al.**
United States District Court, District of Maryland (Case No. 97-2218)
Trial and deposition testimony and expert report: lost enterprise value and lost profits associated with improper solicitation of enterprise resource planning software trainers.
- **William Aramony v. United Way of America et al.**
United States District Court, Southern District of New York (Case No. 96 Civ. 3962 (SAS))
Trial testimony and expert report: lost contributions and out-of-pocket losses surrounding the departure of United Way of America president.
- **Fox v. Fox**
State of Virginia, Circuit Court, Arlington County (Chancery No. 96-80)
Trial testimony (proffered) and expert report: prospective valuation of a patent portfolio involving lasers used for lithotripsy and angioplasty.
- **AutoNation, Inc. v. Acme Commercial Corp., et al. (CarMax)**
United States District Court, Southern District of Florida (Case No. 96-6141)
Trial and deposition testimony and expert report: reasonable royalty associated with trademark infringement and unfair competition in the auto superstore business.

International Trade Cases

- **In the Matter of Certain Integrated Circuits, Chipsets, and Electronic Devices, and Products Containing Same (NXP Semiconductors N.V. and NXP USA, Inc. (Complainants))**
United States International Trade Commission (Investigation No. 337-TA-1287)
Deposition testimony and expert report: economic evaluation of domestic industry, bond, and the amount and economic significance of inventory of the accused products in case involving patents directed to integrated circuits, chipsets, and electronic devices.
- **In the Matter of Certain High-Density Fiber Optic Equipment and Components Thereof (Panduit Corp. (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-1194)
Trial and deposition testimony and expert reports: civil penalty associated with compliance with GEO and CDO involving patents directed to certain high-density fiber optic equipment.

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- **In the Matter of Certain Electrical Connectors and Cages, Components Thereof, and Products Containing the Same (Amphenol Corporation (Complainant))**
United States International Trade Commission (Investigation No. 337-TA-1241)
Trial and deposition testimony and expert report: economic evaluation of domestic industry, remedy, and bond in case involving patents directed to electrical connectors and cages.
- **In the Matter of Certain Lithium-Ion Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Products Containing the Same (SK Innovation Co., Ltd and SK Battery America, Inc. (Respondents))**
United States International Trade Commission (Investigation No. 337-TA-1181)
Trial and deposition testimony and expert report: economic evaluation of domestic industry and bond issues involving patents directed to lithium-ion batteries.
- **In the Matter of Certain Magnetic Data Storage Tapes and Cartridges Containing the Same (Sony Corporation, Sony Corporation of America, and Sony Electronics, Inc. (Respondents))**
United States International Trade Commission (Investigation No. 337-TA-1012E)
Deposition testimony and expert report: civil penalty associated with compliance with CDOs involving patents directed to certain magnetic data storage tapes and cartridges.
- **In the Matter of Certain Magnetic Data Storage Tapes and Cartridges Containing the Same (II) (Sony Corporation, Sony Storage Media Solutions Corporation, Sony Storage Media Manufacturing Corporation, Sony DADC US, Inc., and Sony Latin America (Respondents))**
United States International Trade Commission (Investigation No. 337-TA-1076)
Trial and deposition testimony and expert report: domestic industry, bond, and public interest issues involving patents directed to certain magnetic data storage tapes and cartridges.
- **In the Matter of Certain Magnetic Data Storage Tapes and Cartridges Containing the Same (Sony Corporation, Sony Corporation of America, and Sony Electronics, Inc. (Respondents))**
United States International Trade Commission (Investigation No. 337-TA-1012)
Trial and deposition testimony and expert report: economic evaluation of FRAND, commercial success, bond, remedy, domestic industry, and public interest issues involving patents directed to certain magnetic data storage tapes and cartridges.
- **In the Matter of Certain 3G Mobile Handsets and Components Thereof (Nokia (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-613)
Trial and deposition testimony and expert report: economic evaluation of whether proposed license terms for certain wireless devices are discriminatory under a FRAND obligation and economic evaluation of hold-up and reverse hold-up.
- **In the Matter of Certain Sulfentrazone, Sulfentrazone Compositions, and Processes for Making Sulfentrazone (FMC (Complainant))**
United States International Trade Commission (Investigation No. 337-TA-914)
Trial and deposition testimony and expert report: irreparable harm, balance of hardships, and public interest involving a patent directed to a crop herbicide.
- **In the Matter of Certain Opaque Polymers (Organik Kimya (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-883)
Deposition testimony and expert report: injury, independent economic valuation, and bond involving trade secrets used in the production of opaque polymers.

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- **In the Matter of Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof (Nokia (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-868)
Trial and deposition testimony and expert report: economic evaluation of whether proposed license terms for certain wireless devices are discriminatory under a FRAND obligation, and economic evaluation of hold-up and reverse hold-up.
- **In the Matter of Certain Wireless Devices with 3G Capabilities and Components Thereof (Nokia (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-800)
Trial and deposition testimony and expert report: economic evaluation of whether proposed license terms for certain wireless devices are discriminatory under a FRAND obligation.
- **In the Matter of Certain Computing Devices with Associated Instruction Sets and Software (VIA Technologies, Inc., Centaur Technology, IP-First LLC (Complainants))**
United States International Trade Commission (Investigation No. 337-TA-812)
Trial and deposition testimony and expert report: economic evaluation of domestic industry issues associated with importation of certain computing devices.
- **In the Matter of Certain Modified Vaccinia Ankara (“MVA”) Viruses and Vaccines and Pharmaceutical Compositions Based Thereon (Bavarian Nordic A/S (Complainant))**
United States International Trade Commission (Investigation No. 337-TA-550)
Deposition testimony and expert report: domestic industry and injury involving patents and proprietary technology directed to vaccines.

Malpractice Cases

- **TattleTale Portable Alarm Systems, Inc. v. Calfee, Halter & Griswold LLP, et al.**
United States District Court, Southern District of Ohio, Eastern Division (Case No. 2:10-CV-226)
Deposition testimony and expert report: lost royalties associated with a law firm’s negligence in handling a patent directed to portable alarm systems.
- **Timothy Robinson and Whorl, LLC v. Cohen Mohr, LLP; Dan Duval; Perkins Coie, LLP; Perkins Coie, L.P.C.; Perkins Coie, D.C.P.C.; and Perkins Coie, California, P.C.**
State of Virginia, Circuit Court of Fairfax County (Case No. CL-2009-080)
Deposition testimony and expert report: lost value and prejudgment interest involving allegations of law firm’s negligence in securing an interest in intellectual property directed to biometric payment technology.
- **Frank Robertson and Cayvon, Inc. v. Nexsen Pruet Jacobs & Pollard, LLP**
South Carolina Common Pleas Court, Fifth Judicial Circuit, Richland (Case No. 2004-CP-40-5531)
Deposition testimony: lost profits associated with a law firm’s negligence in handling a patent directed to commercial nut-cracking machines.
- **Anodyne Corp. v. Klaas, Law, O’Meara & Malkin**
State of Colorado District Court, City and County of Denver (Case No. 97-CV-7129)
Trial testimony and expert report: lost licensing income and prejudgment interest associated with a law firm’s negligence in filing a patent application directed to wrappable flashlights.

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FRAND Cases

- **Audio MPEG, Inc., U.S. Philips Corporation, TDF SAS, and Institut Für Rundfunktechnik GmbH v. Dell, Inc.**
United States District Court, Eastern District of Virginia, Norfolk Division (Case No. 1:15-CV-1674 AJT/TCB)
Deposition testimony and expert report: analysis of patent pool compliance with FRAND commitments and determination of FRAND-compliant royalties involving patents directed to the transmission and storage of digital audio files.
- **In the Matter of Certain Magnetic Data Storage Tapes and Cartridges Containing the Same (Sony Corporation, Sony Corporation of America, and Sony Electronics, Inc. (Respondents))**
United States International Trade Commission (Investigation No. 337-TA-1012)
Trial and deposition testimony and expert report: economic evaluation of FRAND, commercial success, bond, remedy, domestic industry, and public interest issues involving patents directed to certain magnetic data storage tapes and cartridges.
- **In the Matter of Certain 3G Mobile Handsets and Components Thereof (Nokia (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-613)
Trial and deposition testimony and expert report: economic evaluation of whether proposed license terms for certain wireless devices are discriminatory under a FRAND obligation and economic evaluation of hold-up and reverse hold-up.
- **In the Matter of Certain Wireless Devices with 3G and/or 4G Capabilities and Components Thereof (Nokia (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-868)
Trial and deposition testimony and expert report: economic evaluation of whether proposed license terms for certain wireless devices are discriminatory under a FRAND obligation, and economic evaluation of hold-up and reverse hold-up.
- **In the Matter of Certain Wireless Devices with 3G Capabilities and Components Thereof (Nokia (Respondent))**
United States International Trade Commission (Investigation No. 337-TA-800)
Trial and deposition testimony and expert report: economic evaluation of whether proposed license terms for certain wireless devices are discriminatory under a FRAND obligation.

EDITED BOOKS

- *Eckstrom's Licensing in Foreign and Domestic Operations: The Forms and Substance of Licensing*, (2012 – 2016).

ARTICLES

- “Royalty Rates for Patents,” (with Shogo Hamasaki and Yuan Tian), in G. Battersby and C. Grimes, *Licensing Royalty Rates 2022 Edition* (2022).
- “Patent Damages in US Courts: Overview of Current State of Play,” (with Justin McLean, Carla Mulhern, and Robert Vigil), in *IAM Yearbook 2019: Building IP Value in the 21st Century* (2018).
- “Introduction to Lost Profits,” (with Robert Vigil and Michael Chapman), in E. Harry III and J. Kinrich, *Lost Profits Damages: Principles, Methods and Applications* (2017).

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- “Assessing Commercial Success at the U.S. Patent Trial and Appeal Board,” (with Robert Vigil), in *International In-House Counsel Journal* (Summer 2015).
- “Response to Rejoinder: Clearing Up the Confusion,” (with Michael Chapman), *Law360* (IP, Technology, Appellate, and California Law360) (September 3, 2015).
- “Rebuttal: It’s not an Inappropriate Reasonable Royalty Rule,” (with Michael Chapman), *Law360* (IP, Technology, and California Law360) (August 24, 2015).
- “Problems With Hypothesizing a Reasonable Royalty Negotiation,” (with Michael Chapman), *Law360* (IP Law360) (January 7, 2014).
- “The Hypothetical Negotiation and Reasonable Royalty Damages: The Tail Wagging the Dog,” (with Michael Chapman), in *Stanford Technology Law Review* (Vol. 16 No. 3, Spring 2013).
- “The 25% Rule Lives On,” (with Carla Mulhern and Michael Wagner), *Law360* (IP Law360) (September 8, 2010).
- “Patent Auctions: How Far Have We Come?” (with Robin Heider, Coleman Bazelon, Christine Bieri and Peter Hess), in *les Nouvelles, Journal of The Licensing Executives Society* (March 2010) (article of the month).
- “The Economic Implications (and Uncertainties) of Obtaining Permanent Injunction Relief after eBay v. MercExchange,” (with Douglas Ellis, Michael Chapman and Scott Oliver), in *Federal Circuit Bar Journal* (Vol. 17 No. 4, 2008).
- “Application of Game Theory to Intellectual Property Royalty Negotiations,” (with Michael Chapman), in R. Goldscheider and A. Gordon, *Licensing Best Practices: Strategic, Territorial and Technology Issues* (2006).
- “Book Review: *The LESI Guide to Licensing Best Practices: Strategic Issues and Contemporary Realities*,” in 21 *Intellectual Property Law Newsletter* 18 (Winter 2003).
- “Use of the 25 Per Cent Rule in Valuing IP,” (with Robert Goldscheider and Carla Mulhern), in 37 *les Nouvelles, Journal of The Licensing Executives Society* 123 (December 2002). Also in G. Smith and R. Parr, *Intellectual Property: Valuation, Exploitation and Infringement Damages* (2005).
- “Intellectual Property Valuation and *Hughes Aircraft v. The United States*: A Giant Leap for Mankind or Lost in Space?” (with Brett Reed), in R. Parr, *Intellectual Property Infringement Damages: A Litigation Support Handbook, 1997 Cumulative Supplement* (1997).
- “Damages in Patent and Trademark Infringement,” in *The Journal of Business Valuation* (1995).
- “The *Panduit* Lost Profits Test After *BIC Leisure v. Windsurfing*,” in 3 *The Federal Circuit Bar Journal* 311 (Fall 1993) (with Erin Page). Also in 3 *Bright Ideas* - The Newsletter of the Intellectual Property Law Section of the New York State Bar Association 36 (Spring, 1994).
- “The CAFC and its Patent Damages Awards,” in 1 *The University of Baltimore Intellectual Property Law Journal* 17 (1992).

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- “Pre-tax Versus After-tax Patent Damages: Do the Courts Have It Right?” in 74 *Journal of the Patent and Trademark Office Society* 938 (December 1992). Also in 7 *Managing Intellectual Property* 17 (March, 1993).
- “Taxes and Lost Profits,” in 7 *Commercial Damages Reporter*, 177 (Iss. 6, Sept. 1992).
- “Considering Taxes in the Computation of Lost Business Profits,” in 25 *Creighton L.R.* 41 (1991).

SPEECHES/COURSES/PRESENTATIONS

- “WG9/10 Panel: Unique Problems and Opportunities Posed by Global Patent Litigation - Part 1 (Unified Patent Court & Global SEP/FRAND),” The Sedona Conference WG9 and WG10 Joint Annual Meeting, November 2021 (with Julianne Buchinski, Patricio Delgado, Benjamin Grzimek, Haifeng Huang, Frances Marshall, Jim Oliva, Hon. Prathiba Singh, Richard Stark, and Laura Whiting).
- “Problems with Irreparable Harm in Preliminary Injunction Patent Cases,” IPO Damages & Injunction Committee Meeting, August 2021.
- “Irreparable Harm in Patent Preliminary Injunction Cases,” 2021 Intellectual Property Scholars Conference, August 2021 (with Jorge Contreras).
- “Understanding the Buying Process,” Patent Transactions, IAM Market, April 2021 (with Heath Hoglund, Joseph Kucera, Ami Patel Shah, Changhae Park, and Kent Richardson).
- “Remedies,” Guest Lecturer, Georgetown University Law Center, April 2012, April 2013, April 2014, April 2015, April 2016, April 2017, April 2018, April 2019, April 2020, April 2021, and April 2022 (with John Taurman).
- “Impacts of Coronavirus and Major Business Disruption on Remedies in IP Cases,” IPO Chat Channel Webinar, June 2020 (with Douglas Frank, Lucy Wheatley, and Jenna Pellecchia).
- “Irreparable Harm in Patent Cases,” IPO Damages & Injunctions Committee Meeting, May 2020 (with Natalie Gonzales and Syed Fareed).
- “Patents, Innovation and Value,” Guest Lecturer, University of Pennsylvania Law School, February 2019 (with David Abrams).
- “*Sprint v. Time Warner Cable*: Admissibility of Past Jury Verdicts in Damages Estimation,” Intellectual Property Owners Association Damages and Injunctions Committee Monthly Call, December 2018 (with Mark Finkelstein).
- “Entire Market Value Rule: Finjan v. Exmark v. Power Integrations,” 2018 Patent Damages Symposium, The Licensing Executive Society (Washington DC Chapter), September 2018 (with Stephen Crenshaw, Jennifer Vanderhart, Jeff Stec, and Stephen Holzen).
- “2018 Daubert Guideposts in Reasonable Royalty Estimation,” Daubert Motion and Patent Challenges in the 2018 Landscape: Significant Trends and Updates, The Knowledge Group, September 2018 (with James Donohue).

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- “TCL v. Ericsson: Non-Discrimination,” TCL v. Ericsson FRAND Decision: Legal Implications, The Knowledge Group, September 2018 (with Alan Cox, Stephen Korniczky, and Mario Lopez).
- “Apportionment in Reasonable Royalty Cases,” Reasonable Royalty Damages, Apportionment and Expert Opinions in Light of *Exmark* Case, The Knowledge Group, May 2018 (with Matthew Lynde, Russell Mangum III, and Joel Wacek).
- “Apportionment in Reasonable Royalty Cases,” Apportionment in Patent Damages: What you Need to Know and Do, The Knowledge Group, March 2018 (with Daniel McGavock and John Scalf).
- “Post-Trial Remedies,” What Is My Intellectual Property Worth: Issues That Make a Difference Inside and Outside the Courtroom, Inaugural IP Conference on Issues that Make A Difference, University of Arizona James E. Rogers College of Law, March 2018 (with Timothy Sendek).
- “Design Patent Damages Before Apple v. Samsung,” Design Patent Damages: Hot Buttons in 2017 and Beyond, The Knowledge Group, July 2017 (with Barry Bell and Jeffery Stec).
- “Early Consideration of Patent Damages,” The Sedona Conference Webinar, June 2017 (with Hon. John Love, Melissa Finocchio, and Andrea Weiss Jeffries).
- “Permanent Injunctive Relief,” Recent Developments in Damages and Injunctions Law, IPO Damages & Injunctions Committee Conference, June 2017 (with Sarah Burstein, Mark Halligan, David Nelson, and Jenna Pellecchia).
- “U.S. Patent Landscape,” The European Patent Market – The Next Wave for Business? International In-House Counsel Journal 5th Annual Conference, March 2017 (with Anders Arvidsson, Mark Houghton, and Bruce Girvan).
- “The Conference on Patent Damages,” University of Texas School of Law, February 2017 (with David Abrams, Elizabeth Bailey, James Kearl, Shirley Webster, and Michael Risch).
- “2016 Patent Damages Daubert Opinions,” The Evolving Landscape in the Calculation of Patent Damages – Reasonable Royalties, The Knowledge Group, February 2017 (with Barry Bell, James McGovern, and Jeffery Stec).
- “Commercial Success at the PTAB: 2016 Update,” Strafford Publications CLE Webinar, September 2016 (with Michael Flibbert and Maureen Queler).
- “Economic Perspectives on Recent Patent Damages Rulings,” Silicon Valley Intellectual Property Law Association, May 2016 (with Michael Chapman).
- “Recent Developments in Reasonable Royalty Damages,” Intellectual Property Owners Association Patent Damages Summit, May 2016 (with Charles Barquist, Douglas Melamed, Joseph Shear, and Karen Vogel Weil).
- “The Rise of the ‘Footprint’ Approach in Reasonable Royalty Damages: What’s New in 2016,” The Knowledge Group, February 2016 (with Lisa Cameron, Thomas Dunlap, Kevin Goldman, and Michael Padden).

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- “Patent Infringement Reasonable Royalty Damages: Apportion the Increment?” Asian Pacific American Bar Association of Silicon Valley, November 2015 (with William Rooklidge, Michael Chapman, and Richard Eichmann).
- “Patent Enforcement,” Guest Lecturer, George Washington University Law School, September 2015 (with Chuck Donohoe), September 2016.
- “Commercial Success at the PTAB,” Strafford Publications CLE Webinar, August 2015 (with Michael Flibbert and Maureen Queler).
- “Patent Damages Developments in the US,” International Intellectual Property Law Association Global IP Summit, July 2015 (with Iain Connor and Ronald Courtney).
- “WG9 Panel: Development of a Preliminary Compensatory Damages Contentions (PCDCs) Process, Including the Drafting of Local Patent Damages Rules,” The Sedona Conference WG9 and WG10 Joint Midyear Meeting, May 2015 (with Marta Beckwith, Cathy Bissoon, Melissa Finocchio, Andrea Weiss Jeffries, and James Morando).
- “Commercial Success at the PTAB,” IPO Chat Channel Webinar, March 2015 (with Michael Flibbert and Pradeep Chintagunta).
- “WG9 Panel: Commentary on Development of Local Patent Rules for the Exchange of Preliminary Compensatory Damages Contentions (PCDCs),” The Sedona Conference All-Voices Meeting, November 2014 (with Marta Beckwith, Cathy Ann Bencivengo, John Desmarais, and Melissa Finocchio).
- “Patent Damages: How to Build a Case Now,” IPO Chat Channel Webinar, October 2014 (with Paul Grewal and Gary Hoffman).
- “WG9 Commentary on Patent Damages and Remedies,” The Sedona Conference Webinar, October 2014 (with Gary Hoffman, Michael Brody, Rachel Krevans, and William Rooklidge).
- “Economic Testimony in IP Litigation,” Inside Counsel Spotlight, August 2014.
- “The Evolution of License Comparability in the Estimation of Reasonable Royalty Damages,” West Legal Education Center Webinar, July 2013 (with Carla Mulhern).
- “Georgia-Pacific and the Hypothetical Negotiation: Is the Tail Wagging the Dog?” Licensing Executives Society Washington DC Chapter Meeting, May 2012 (with Michael Chapman).
- “Early Evaluation of Damages in Patent Trials,” IPO Chat Channel Webinar, February 2012 (with Peter Armenio and Rachel Krevans).
- “Evolving IP Value: Recent Developments in Damages and Licensing,” Top IP Retreat 2011, September 2011 (with Michael Wagner).
- “Intellectual Property Valuation,” WIPO Summer School on Intellectual Property, USPTO, August 2011 (with Daria Killebrew).

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- “Patent Infringement: Calculating Royalty Damages in a Post-Uniloc World,” Strafford Publications Webinar, March 2011 (with Paul Michel, George Pappas, and Carla Mulhern).
- “Uniloc v. Microsoft: The Decision and Its Impact on IP Valuation,” Licensing Executives Society Hot Topic Webinar, January 2011 (with Michael Lasinski, Justin Nelson, and Mohan Rao).
- “Patent Reform Update,” The District of Columbia Bar, January 2011 (with Paul Michel, Cheryl Miller, and Jason Everett).
- “Reasonable Royalties and Apportionment of Value,” CalCPA Education Foundation, IP Damages Institute 2010, November 2010 (with Michael Wagner, Karen Vogel Weil, and William Rooklidge).
- “What is a Trademark Worth?,” Stifel Retail Summer School at Columbia Business School, August 2010.
- “Economics of False Patent Marking,” BNA Webinar and Audioconferences, Recent Developments in the Law and Economics of False Patent Marking, July 2010 (with Anthony Roth and John Browning).
- “Economic Implications of Patent Reform,” Georgetown University McDonough School of Business, Center for Business and Public Policy; McKool Smith; and Analysis Group, Patent Reform 2010: What Shape Will it Finally Take?, June 2010 (with Paul Michel, Bernard Cassidy and Brian Riopelle).
- “Patent Auctions: How Far Have We Come?,” Licensing Executives Society Annual Meeting (Workshop 3-U), October 2009 (with Robin Heider).
- “Creating a Bullet-Proof Damages Case from Day One,” Minnesota’s CLE’s First Litigation Advocacy Institute: Winning Before Trial, June 2009.
- “Permanent Injunction: An Economist’s Perspective,” Strategies for Managing Intellectual Property Litigation Summit, February 2007.
- “Providing Effective Royalty Testimony,” Licensing Executives Society / Association of University Technology Managers Spring Meeting, May 2006 (with Carla Mulhern and Lisa Pirozzolo).
- “Intellectual Property Damages From An Economist’s Perspective,” The District of Columbia Bar, Trade Secrets Section, November 2005 (with Carla Mulhern, Abram Hoffman and Michael Morin).
- “Valuation and Taxation Roundtable Discussion -- Hands on Application of Valuation Tools,” Licensing Executives Society Winter Meeting, February 2005 (with Serge-Alain Wandji).
- “Valuation and Pricing of IP,” Association of University Technology Managers Annual Meeting (Educational Track ED1), February 2005 (with Ashley Stevens, Jennifer Hartt and Andrew Maslow); Licensing Executives Society DC Chapter Meeting, February 2005.
- “Ingredients of a Damages Study,” Law Seminars International, Calculating and Proving Patent Damages, October 2004.

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- “Current Topics in Technology Valuation,” Association of University Technology Managers Annual Meeting (Educational Track ED1), March 2004.
- “Creative Thinking on Remedies,” Law Seminars International, Trademarks Transactions and Litigation Workshop, July 2003.
- “Industry Royalty Rates and Profitability: An Empirical Test of the 25% Rule,” Licensing Executives Society Annual Meeting (Workshop 3-L), October 2001 (with Carla Mulhern and Robert Vigil).
- “Patent vs. Trade Secret Protection after 18-Month Publication and Festo--Monetary Relief,” Licensing Executives Society Annual Meeting (Workshop 2-M), October 2001 (with Griffith Price, Jr., John Williamson and Robert Payne).
- “The Design-Around Defense in Lost Profits Litigation,” Patent Lawyers Club of Washington, May 2000.
- “Use of the 25% Rule in Valuing Intellectual Property,” Center for Continuing Education, Santa Clara, California, December 1999.
- “Extracting Value from Intellectual Assets: Valuation,” INTX Seminar -- On the Frontier of Intellectual Asset Management: The Strategic Management of Intellectual Assets, November 1999.
- “Internet Patents – Monetary Remedies,” American Intellectual Property Law Association Mid-winter Meeting – IP Law in Cyberspace, February 1999 (with R. Jeffrey Malinak).
- “Industry Royalty Rates and Profitability: An Empirical Test of the 25% Rule,” Licensing Executives Society Annual Meeting (Workshop 3-11), October 1998 (with Carla Mulhern).
- “Royalty Rates and Awards with Patent Infringement Cases: 1916-1996,” Licensing Executives Society Annual Meeting (Workshop G3), November 1997.
- “Valuation of Technology,” Technology Transfer Society Annual Meeting, July 1997.
- “The Valuation and Licensing of Intellectual Property,” Launchspace, December 1996 (with Robert Goldscheider).
- “Quantifying and Valuing Royalties for Intellectual Property,” The 5th Intellectual Property Institute for Corporate Counsel, May 1996.
- “Taxes and Damages,” CPA/Lawyer Relations Committee, DC Institute of CPAs -Legal and Financial Implications of Damages in Litigation, October 1995.
- “Estimating Lost Profits in Commercial Litigation,” Maryland Association of Certified Public Accountants, Litigation Support Service Conferences, May 1995.
- “Damages in Patent and Trademark Infringement,” Joint American Society of Appraisers and Canadian Institute of Chartered Business Valuators meeting, November 1994.

APPENDIX 2

LISTING OF MATERIALS CONSIDERED

EXHIBIT	DESCRIPTION
	Patent Owner's Preliminary Response (IPR2022-00142)
1001	U.S. Patent No. 8,293,742 (filed July 27, 2009) (issued October 23, 2012)
2020	Declaration of Robert J. Noecker
2023	Declaration of John Ferris
2041	Bagwell, Kyle, "The Economic Analysis of Advertising," Columbia University Department of Economics Discussion Paper Series, Discussion Paper No.: 0506-01, August 2005.
2042	Congressional Budget Office, "Promotional Spending for Prescription Drugs," December 2, 2009.
2043	Ching, Andrew T. and Masakazu Ishihara, "Measuring the Information and Persuasive Roles of Detailing on Prescribing Decisions," <i>Management Science</i> , July 2012, Vol. 58, No. 7, 1374-1387
2044	Gonzalez, Agustin L., et al., "A survey of optometrists' ophthalmic medication prescribing," <i>Clinical Optometry</i> , March 5, 2014, Vol. 6, 11-15.
2045	IRI, "New Product Pacesetters: Innovation Before the 'New Normal,'" May 2020.
2046	Carlton, Dennis W. and Jeffery M. Perloff, <i>Modern Industrial Organization</i> , 4th Ed., Pearson Education Limited 2015.
2047	Samuelson, Paul A. and William D. Nordhaus, <i>Economics</i> , 19th Ed., McGraw-Hill 2010.
2048	Spiegel, A. J. and C. F. Gerber, "The compatibility of tetrahydrozoline hydrochloride solutions," <i>Journal of the American Pharmaceutical Association</i> , July 1959, Vol. 20, No. 7, 404-405.
2049	Thomas, Natalie A. "Secondary Considerations in Nonobviousness Analysis: The Use of Objective Indicia Following KSR v. Teleflex,"

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EXHIBIT	DESCRIPTION
	<i>New York University Law Review</i> , December 2011, Vol. 86, No. 6, 2070-2112.
2050	Thomas, Randall and Ron Melton, “2016 Clinical Guide to Ophthalmic Drugs,” <i>Review of Optometry</i> , May 15, 2016, 1-51.
2051	BAU-LUM00063901
2052	LUM.0205.USA.21 (CONFIDENTIAL)
2055	LUM.1827.USA.21
2056	Lumify_v9 - PRC APRVD
2057	IRI Panel Data (CONFIDENTIAL)
2058	IRI Point-of-Sale Data (CONFIDENTIAL)
2059	Visine Supplemental Approval, October 17, 2018
2060	Lumify Supplemental Approval, April 30, 2019
2061	Lumify Supplemental Approval, February 21, 2019
2062	Lumify Supplemental Approval, March 5, 2020
2063	Lumify Supplemental Approval, November 29, 2021
2064	Lumify Supplemental Approval, September 23, 2020
2065	Lumify NDA Approval, December 22, 2017
2066	Lumify NDA Summary Overview, November 29, 2017
2067	Bausch + Lomb Corporation SEC Form 10-Q for the quarterly period ended March 31, 2022
2068	Bausch + Lomb Corporation Q1 2022 Financial Results
2069	Bausch + Lomb Corporation SEC Form S-1, January 13, 2022
2070	Bausch + Lomb Corporation SEC Form S-1A, April 28, 2022
2071	Valeant Pharmaceuticals International, Inc. 2017 Annual Report
2072	Bausch Health Companies Inc. 2018 Annual Report
2073	Bausch Health Companies Inc. Q1 2019 Financial Results

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EXHIBIT	DESCRIPTION
2074	Bausch Health Companies Inc. SEC Form 10-K for the fiscal year ended December 31, 2021
2075	Bausch Health Companies Inc. Q4 and FY 2021 Financial Results
2076	Johnson & Johnson SEC Form 10-K for the fiscal year ended December 31, 2006
2077	https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm?event=overview.process&ApplNo=020065 (viewed August 16, 2022)
2078	https://www.accessdata.fda.gov/scripts/cder/ob/results_product.cfm?Appl_Type=N&Appl_No=020226#41039 (viewed August 16, 2022)
2079	https://www.accessdata.fda.gov/scripts/cder/ob/patent_info.cfm?Product_No=001&Appl_No=208144&Appl_type=N (viewed August 22, 2022)
2080	https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm?event=overview.process&ApplNo=020485 (viewed July 11, 2022)
2081	https://www.amazon.com/Lumify-Redness-Reliever-Drops-7-5mL/dp/B07BVYZL88/ref=sr_1_4?keywords=lumify+drops&qid=1656719062&sr=8-4 (viewed July 1, 2022)
2082	https://www.bausch.com/about-bausch-lomb/locations/ (viewed July 8, 2022)
2083	https://www.bausch.com/news/messages-from-ceo/article/1/ (viewed July 8, 2022)
2084	https://www.bausch.com/products/otc-eye-care-supplements/redness-relief/ (viewed August 15, 2022)
2085	https://www.businesswire.com/news/home/20220729005454/en/Dr.-Reddys-Laboratories-enters-into-a-licensing-agreement-with-Slayback-Pharma-to-%E2%80%A6 (viewed August 22, 2022)
2086	https://www.cleareyes.com/eye-drops/redness-relief (viewed July 11, 2022)

APPENDIX 2

EXHIBIT	DESCRIPTION
2087	https://www.cleareyes.com/eye-drops/sensitive-eyes-relief/clear-eyes-complete-sensitive-eyes#ingredients (viewed August 15, 2022)
2088	https://www.cleareyes.com/eye-drops/redness-relief/clear-eyes-cooling-comfort-itchy-eye-relief#ingredients (viewed August 15, 2022)
2089	https://www.cleareyes.com/eye-drops/redness-relief/clear-eyes-maximum-redness-relief-eye-drops#ingredients (viewed August 15, 2022)
2090	https://www.cleareyes.com/eye-drops/redness-relief/clear-eyes-redness-relief-eye-drops#directions (viewed August 16, 2022)
2091	https://www.cleareyes.com/eye-drops/redness-relief/clear-eyes-redness-relief-eye-drops#ingredients (viewed August 15, 2022)
2092	https://www.cleareyes.com/eye-drops/for-travelers/travelers-eye-relief#ingredients (viewed August 15, 2022)
2093	https://www.cvs.com/shop/personal-care/eye-care/drops-lubricants/q/CVS_Health/Eye_Drops/brpt (viewed August 8, 2022)
2094	https://www.cvs.com/shop/lumify-redness-reliever-eye-drops-prodid-1910106 (viewed July 1, 2022)
2095	https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=69166dec-fb86-4c76-9efe-88c3bb12a8f0 (viewed August 15, 2022)
2096	https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=e3c41a58-fc93-4e6c-99be-0529edfb54a4 (viewed August 16, 2022)
2097	https://eyewire.news/news/dr-reddys-laboratories-enters-into-a-licensing-agreement-to-obtain-rights-for-the-private-label-version-of-lumify-in-the-us?c4src=article:infinite-scroll (viewed August 16, 2022)
2098	https://fda.report/Company/Bausch-Lomb-Inc (viewed August 15, 2022)
2099	https://fda.report/Company/Prestige-Brands-Holdings-Inc (viewed August 15, 2022)

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EXHIBIT	DESCRIPTION
2100	https://www.glamour.com/gallery/best-beauty-innovators-of-2022 (viewed July 23, 2022)
2101	https://intothegloss.com/2021/12/top-25-2021-cheap-thrills-beauty-under-35-dollars/ (viewed August 22, 2022)
2102	https://introwellness.com/eyes/drops/lumify-eye-drops-review/ (viewed August 16, 2022)
2103	https://ir.bauschhealth.com/news-releases/2018/05-07-2018-130249958 (viewed July 1, 2022)
2104	https://ir.bauschhealth.com/news-releases/2017/12-22-2017-200318686 (viewed August 16, 2022)
2105	https://ir.bauschhealth.com/news-releases/2018/07-13-2018 (viewed August 15, 2022)
2106	https://ir.bauschhealth.com/news-releases/2013/27-05-2013 (viewed August 16, 2022)
2107	https://ir.nielsen.com/news-events/press-releases/news-details/2020/Capitalizing-on-Innovation-Trends-Today-Will-Drive-Business-Growth-in-the-New-Normal/default.aspx (viewed August 16, 2022)
2108	https://www.lumifydrops.com/faqs (viewed July 22, 2022)
2109	https://www.lumifydrops.com (viewed August 23, 2022)
2110	https://www.lumifydrops.com/professional/clinical-information (viewed July 12, 2022)
2111	https://www.lumifydrops.com/professional (viewed August 15, 2022)
2112	https://www.lumifydrops.com/lumify-science (viewed July 12, 2022)
2113	https://www.mckinsey.com/industries/life-sciences/our-insights/the-secret-of-successful-drug-launches (viewed August 16, 2022)
2114	https://www.newyou.com/beauty-awards/new-beauty-awards-2018/ (viewed July 23, 2022)

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EXHIBIT	DESCRIPTION
2115	https://www.opthalmologyweb.com/1315-News/346489-FDA-Approves-LUMIFY-a-Brimonidine-OTC-for-Ocular-Redness/ (viewed August 16, 2022)
2116	https://www.optometricmanagement.com/issues/2006/november-2006/how-to-maximize-prescription-authority (viewed August 22, 2022)
2117	https://www.optometrytimes.com/view/b-l-licenses-new-technology-treating-ocular-redness?qt-resource_topics_rightrail=1 (viewed August 16, 2022)
2118	https://patents.bausch.com (viewed August 17, 2022)
2119	Advanced Eye Relief Drug Facts, available at https://pi.bausch.com/globalassets/pdf/downloads/consumer/vision-care/safety/advanced-eye-relief-redness-drug-facts.pdf
2120	Advanced Eye Relief Max Drug Facts, available at https://pi.bausch.com/globalassets/pdf/downloads/consumer/vision-care/safety/advanced-eye-relief-maximum-redness-drug-facts.pdf
2121	https://pink.pharmaintelligence.informa.com/RS148905/Lumify-Ad-Launches-As-Bausch-Spends-More-Behind-OTC-Eye-Care-Brands (viewed August 16, 2022)
2122	https://pitchbook.com/profiles/company/492664-60#overview (viewed August 18, 2022)
2123	https://www.prestigebrands.com/products/eye-ear-nose-throat/clear-eyes (viewed July 11, 2022)
2124	https://www.prnewswire.com/news-releases/bausch--lomb-licenses-new-technology-with-potential-to-treat-millions-affected-by-ocular-redness-185856742.html (viewed August 16, 2022)
2125	https://www.prnewswire.com/news-releases/nielsen-bases-names-lumify-eye-drops-to-2020-us-bases-top-25-breakthrough-innovations-list-301143761.html (viewed July 17, 2022)
2126	https://www.prnewswire.com/news-releases/slayback-pharma-announces-fda-approval-of-hydroxyprogesterone-caproate-

APPENDIX 2

EXHIBIT	DESCRIPTION
	injection-usp-1-250-mg-5-ml-in-a-multi-dose-vial-the-first-generic-equivalent-of-makena-injection-1-250-mg-5-ml-multi-dose-vial-300771547.html (viewed August 19, 2022)
2127	https://www.prnewswire.com/news-releases/slayback-pharma-announces-the-final-approval-and-launch-of-generic-zovirax-acyclovir-ointment-5-300383519.html (viewed August 16, 2022)
2128	https://www.prnewswire.com/news-releases/slayback-pharma-announces-approval-of-icatibant-injection-30-mg3-ml-10-mg-ml-generic-equivalent-of-firazyr-301123357.html (viewed July 8, 2022)
2129	https://www.prnewswire.com/news-releases/slayback-pharma-announces-launch-of-merzee-norethindrone-acetate-and-ethinyl-estradiol-capsules-and-ferrous-fumarate-capsules-1-mg20-mcg-generic-equivalent-of-taytulla-301222104.html (viewed July 8, 2022)
2130	https://www.reviewofoptometry.com/article/when-to-prescribe-an-otc-allergy-drop (viewed August 22, 2022)
2131	https://www.riteaid.com/shop/ra-rednss-relf-eye-drp-5z-0354534 (viewed August 8, 2022)
2132	https://www.riteaid.com/shop/rite-aid-eye-care-sterile-eye-drops-0-5-fl-oz (viewed August 8, 2022)
2133	https://rohtoeyedrops.com/collections/redness-reliever/products/rohto_all_in_one_multi-symptom_eye_drops (viewed August 18, 2022)
2134	https://rohtoeyedrops.com/collections/redness-reliever/products/cool_relief_eye_drops (viewed August 18, 2022)
2135	https://rohtoeyedrops.com/collections/redness-reliever/products/rohto_max_strength_redness_relief_cooling_eye_drops (viewed August 18, 2022)
2136	https://rohtoeyedrops.com/collections/redness-reliever/products/rohto-eye-drops-optic-glow (viewed August 18, 2022)

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EXHIBIT	DESCRIPTION
2137	https://rohtoeyedrops.com/collections/redness-reliever/products/rohto-digi-eye-digital-eye-strain-eye-drops (viewed August 18, 2022)
2138	https://rohtoeyedrops.com/collections/redness-reliever (viewed July 11, 2022)
2139	https://www.similasanusa.com/redness-itchy-eye-relief™ (viewed August 8, 2022)
2140	https://slayback-pharma.com/about-us/ (viewed August 15, 2022)
2141	https://slayback-pharma.com/products/ (viewed August 16, 2022)
2142	https://slayback-pharma.com (viewed August 22, 2022)
2143	https://www.target.com/p/lumify-eye-drops/-/A-54293362 (viewed July 1, 2022)
2144	https://www.thezoereport.com/beauty-awards (viewed July 23, 2022)
2145	https://us.mentholatum.com/about-us/ (viewed July 11, 2022)
2146	https://www.verywellhealth.com/best-eye-drops-for-red-eyes-5184209 (viewed July 12, 2022)
2148	https://www.walgreens.com/store/c/productlist/walgreens-redness-relief/N=361377-118 (viewed August 8, 2022)
2149	https://www.walmart.com/ip/LUMIFY-Redness-Reliever-Eye-Drops-Brimonidine-Tartrate-Ophthalmic-Solution-0-025-from-Bausch-Lomb-0-08-Fl-Oz-2-5-mL/193381081?athbdg=L1600 (viewed July 1, 2022)
2150	https://walrus.com/questions/lumify-vs-visine-what-is-the-difference (viewed August 16, 2022)
2151	https://www.accessdata.fda.gov/drugsatfda_docs/label/2020/208144Orig1s006lbl.pdf (viewed August 18, 2022)

All documents cited in this declaration.

APPENDIX 3
LUMIFY
IRI POINT-OF-SALE DATA
U.S. METRICS
Q1 2018 – Q2 2022

2018						2019				
Q1	Q2	Q3	Q4	Total		Q1	Q2	Q3	Q4	Total
[A]	[B]	[C]	[D]	[E]		[F]	[G]	[H]	[I]	[J]
[1] Dollar Sales	-									
[2] Unit Sales	-									
[3] <i>Price per Unit</i>	-									
[4] Volume Sales (in fl. oz.)	-									
[5] <i>Price per Fluid Ounce</i>	-									

2020					2021				
Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
[K]	[L]	[M]	[N]	[O]	[P]	[Q]	[R]	[S]	[T]
[1] Dollar Sales									
[2] Unit Sales									
[3] <i>Price per Unit</i>									
[4] Volume Sales (in fl. oz.)									
[5] <i>Price per Fluid Ounce</i>									

2022			Q2 2018 – Q2 2022	Q3 2018 – Q2 2022	Q1 2019 – Q2 2022
Q1	Q2	Total	Total	CAGR	CAGR
[U]	[V]	[W]	[X]	[Y]	[Z]
[1] Dollar Sales					
[2] Unit Sales					
[3] <i>Price per Unit</i>					
[4] Volume Sales (in fl. oz.)					
[5] <i>Price per Fluid Ounce</i>					

Notes & Sources:

Data include U.S. sales from retail stores across multiple channels (e.g., food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (i.e., purchases made online and shipped to the customer). Units in the IRI POS data refer to packages. One package with two bottles would be recorded as one unit. (EX-2023, ¶32.)

Data are reported in 13-week increments but are shown quarterly.

Lumify launched in May 2018. (See EX-2103.)

[Y] = ((Q2 2022 / Q3 2018)^(1/3.75))-1. The number of years between Q3 2018 and Q2 2022 is 3.75.

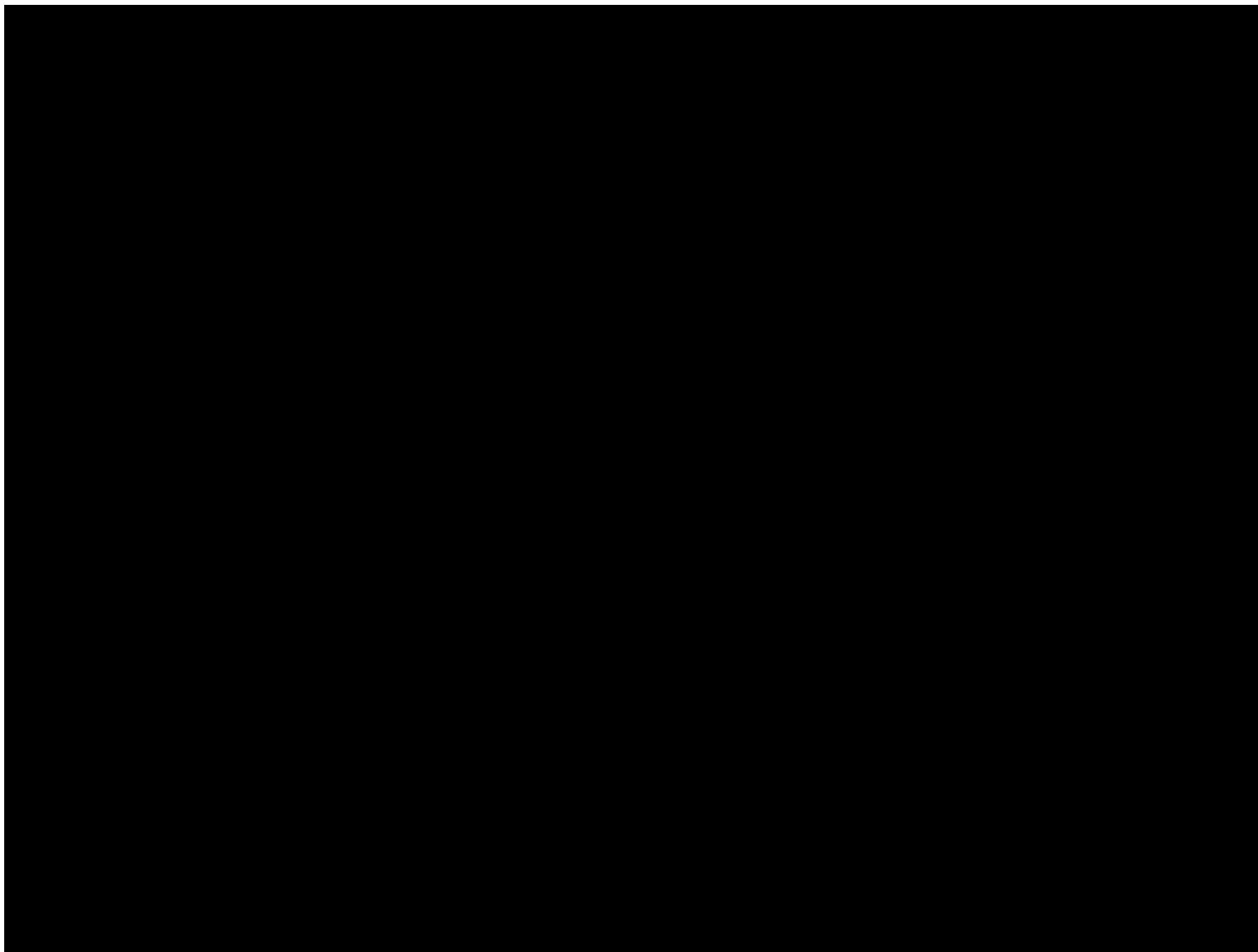
[Z] = ((Q2 2022 / Q1 2019)^(1/3.25))-1. The number of years between Q1 2019 and Q2 2022 is 3.25.

[3] = [1] / [2] for Yearly and Cumulative Totals.

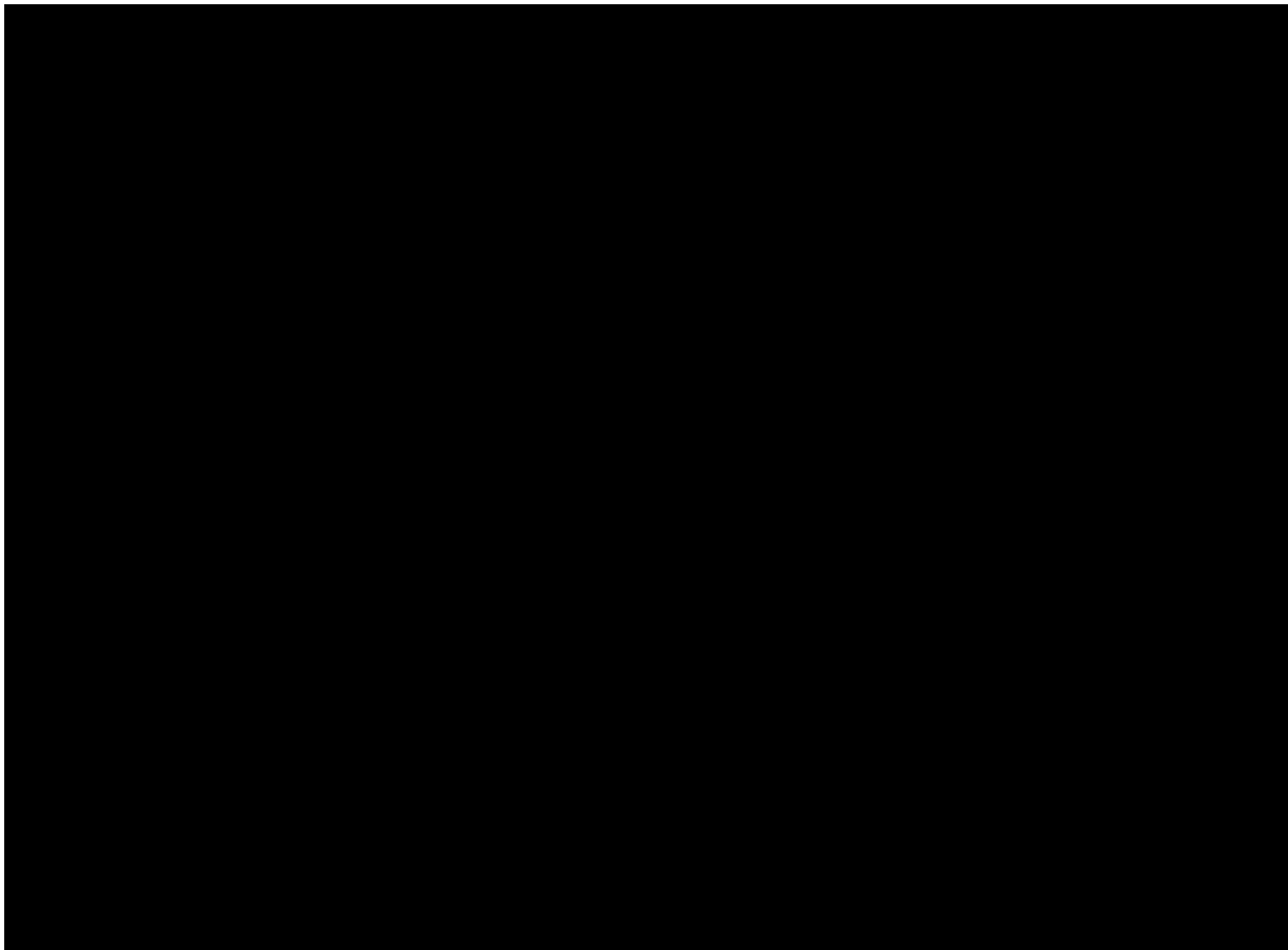
[5] = [1] / [4] for Yearly and Cumulative Totals.

From EX-2058.

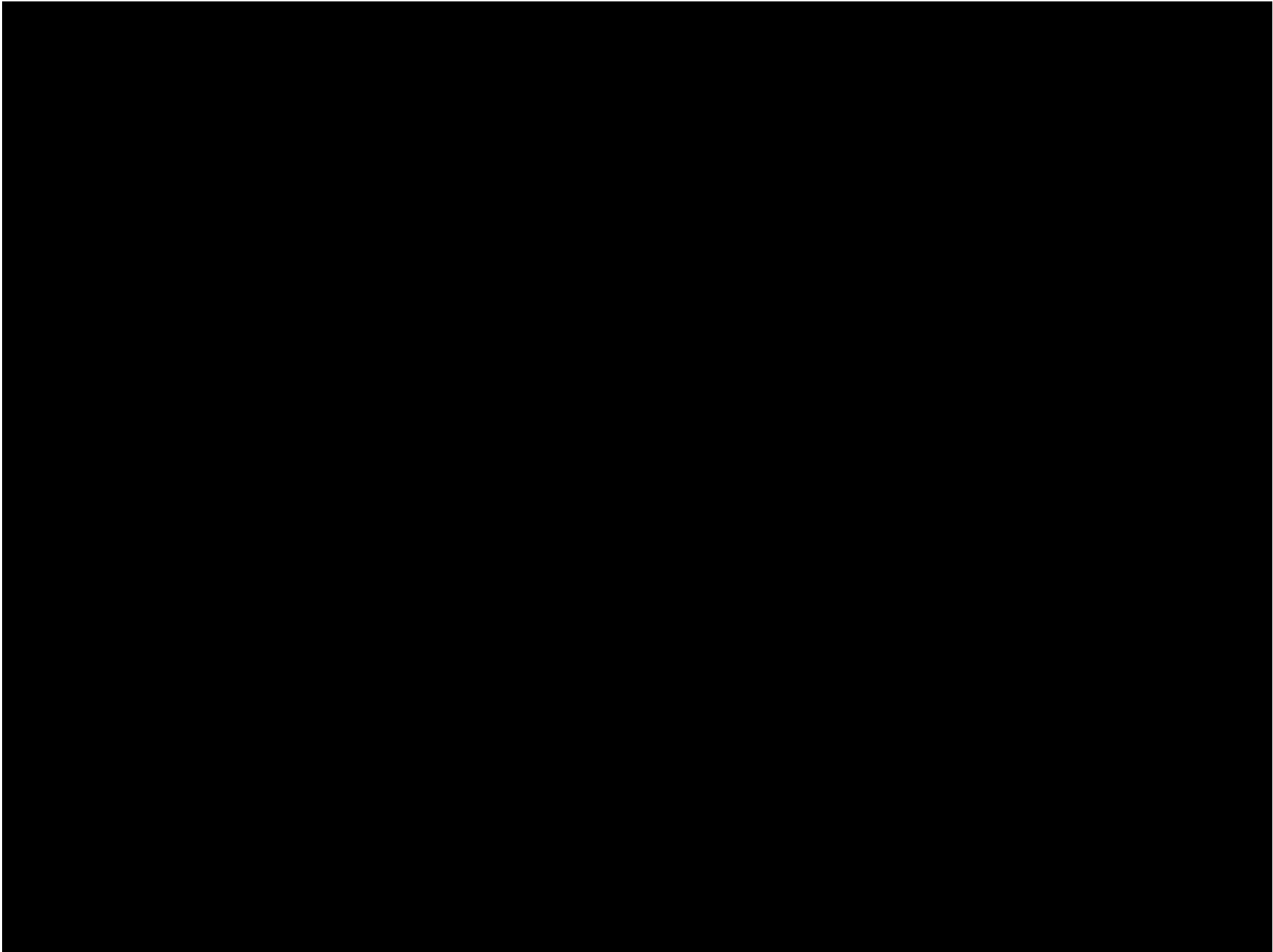
APPENDIX 4



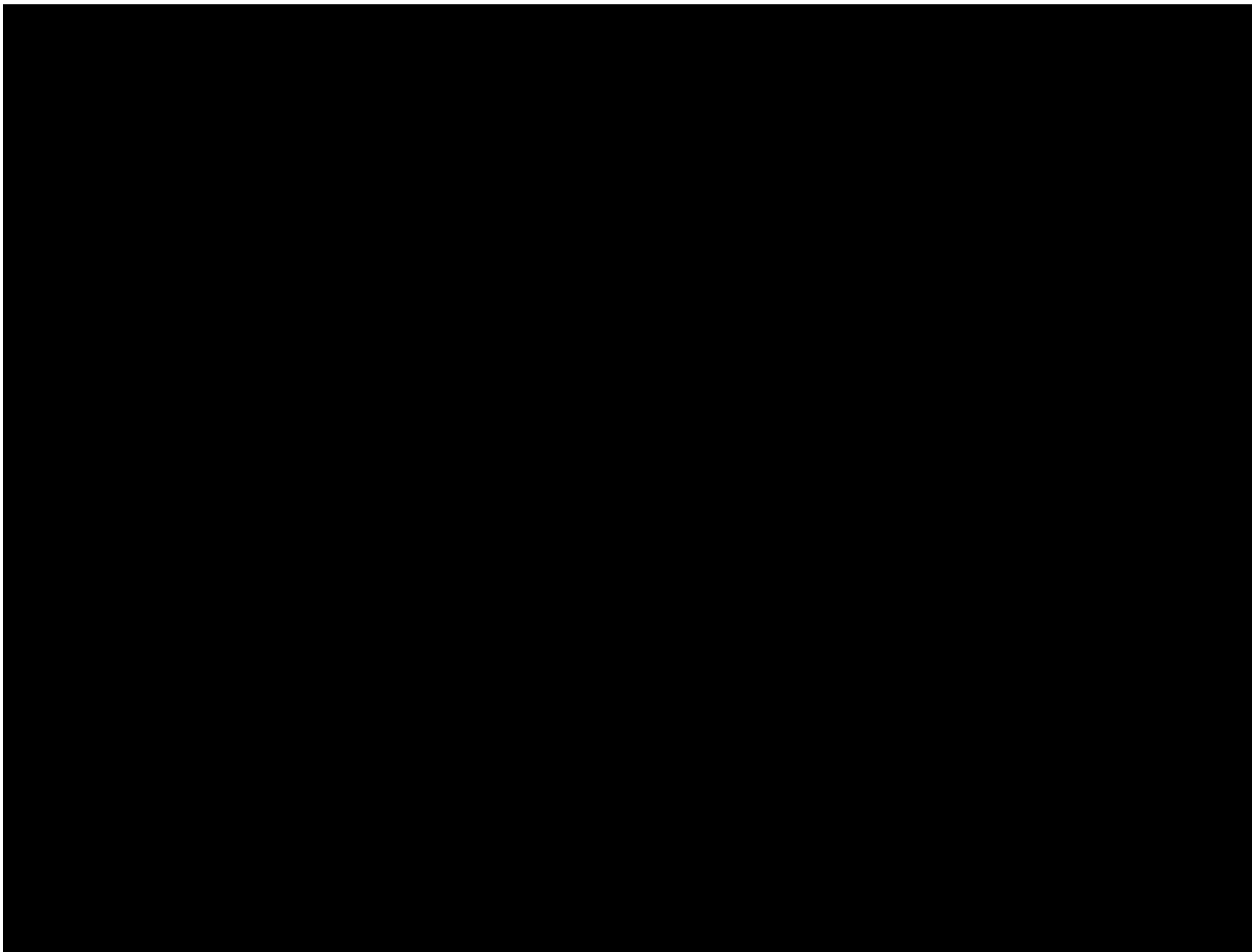
APPENDIX 5



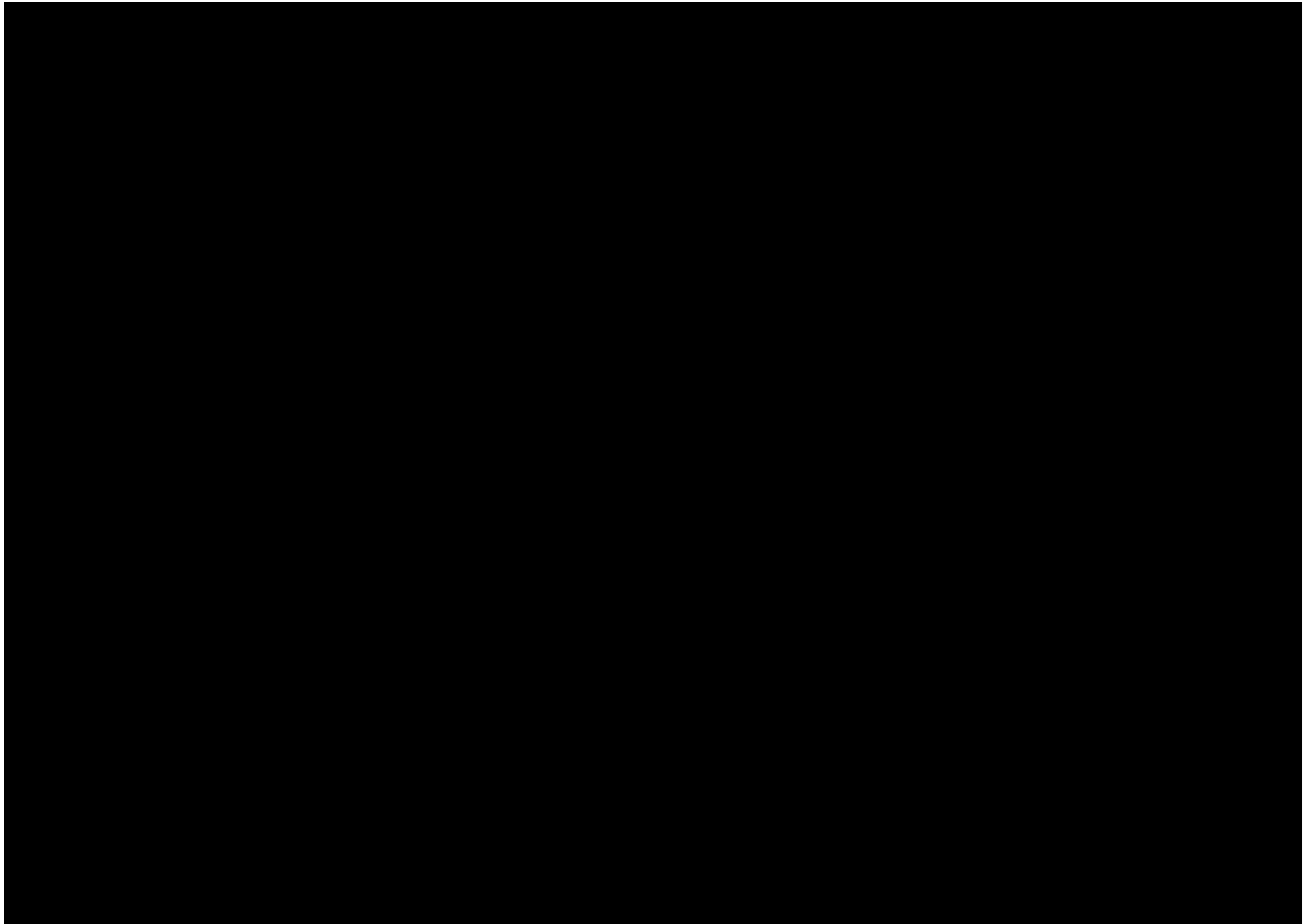
APPENDIX 6



APPENDIX 7



APPENDIX 8



APPENDIX 9

EYE REDNESS RELIEVERS

IRI POINT-OF-SALE DATA

U.S. DOLLAR SALES

Q1 2017 – Q2 2022

[illegible]

APPENDIX 9

EYE REDNESS RELIEVERS

IRI POINT-OF-SALE DATA

U.S. DOLLAR SALES

Q1 2017 – Q2 2022

[illegible]

Notes & Sources:

Data include U.S. sales from retail stores across multiple channels (e.g., food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (i.e., purchases made online and shipped to the customer). (EX-2023, ¶32.)

Data are reported in 13-week increments but are shown quarterly.

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q2 2018 – Q2 2022.

[AD] = ((Q2 2022 Dollar Sales / Q3 2018 Dollar Sales)^(1/3.75))-1. The number of years between Q3 2018 and Q2 2022 is 3.75.

[AE] = ((Q2 2022 Dollar Sales / Q1 2019 Dollar Sales)^(1/3.25))-1. The number of years between Q1 2019 and Q2 2022 is 3.25.

[1] Lumify launched in May 2018. (See EX-2103.)

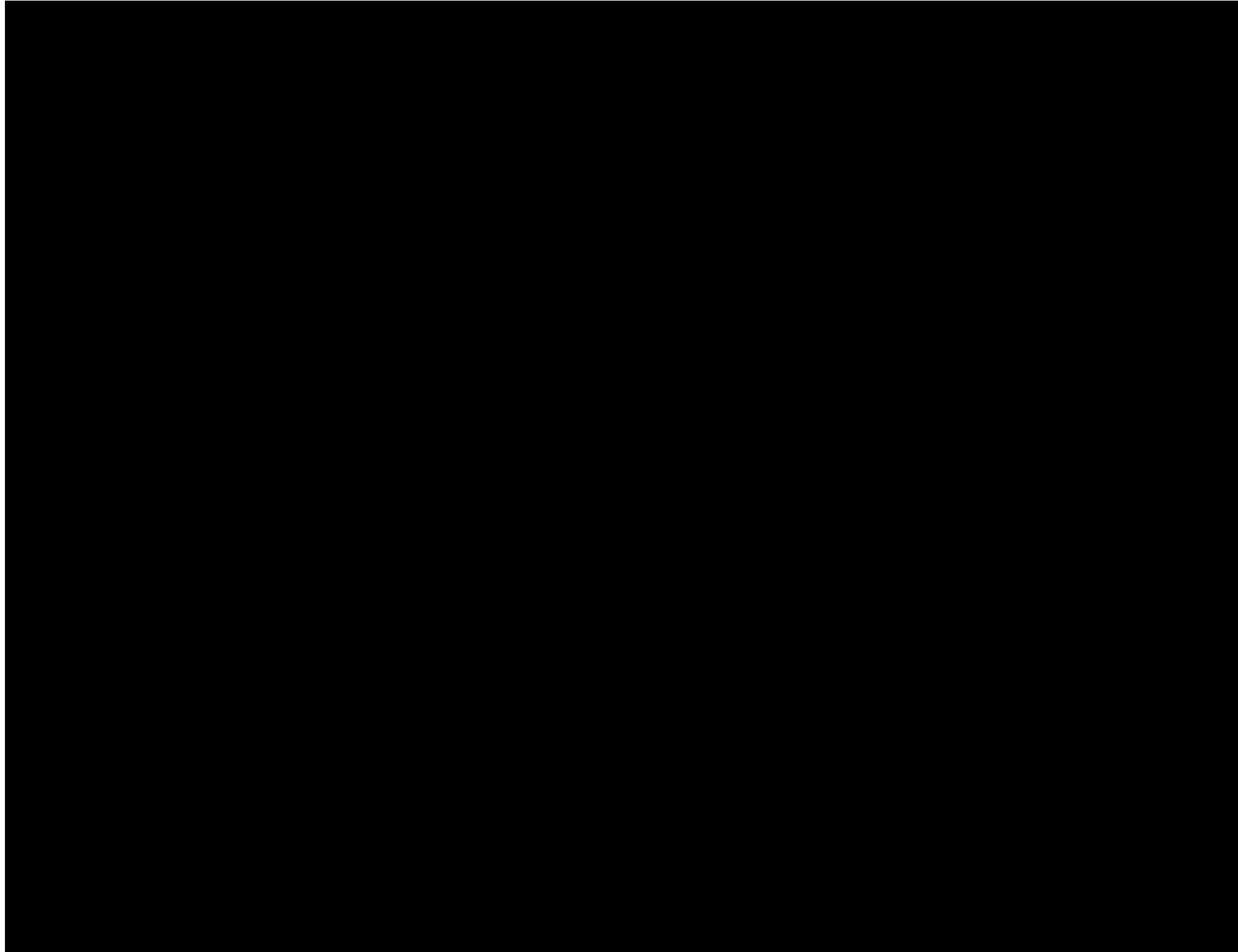
[5] Refers to product 'PL RED R.'

[8][A]-[8][AC] = Sum of [9]:[18].

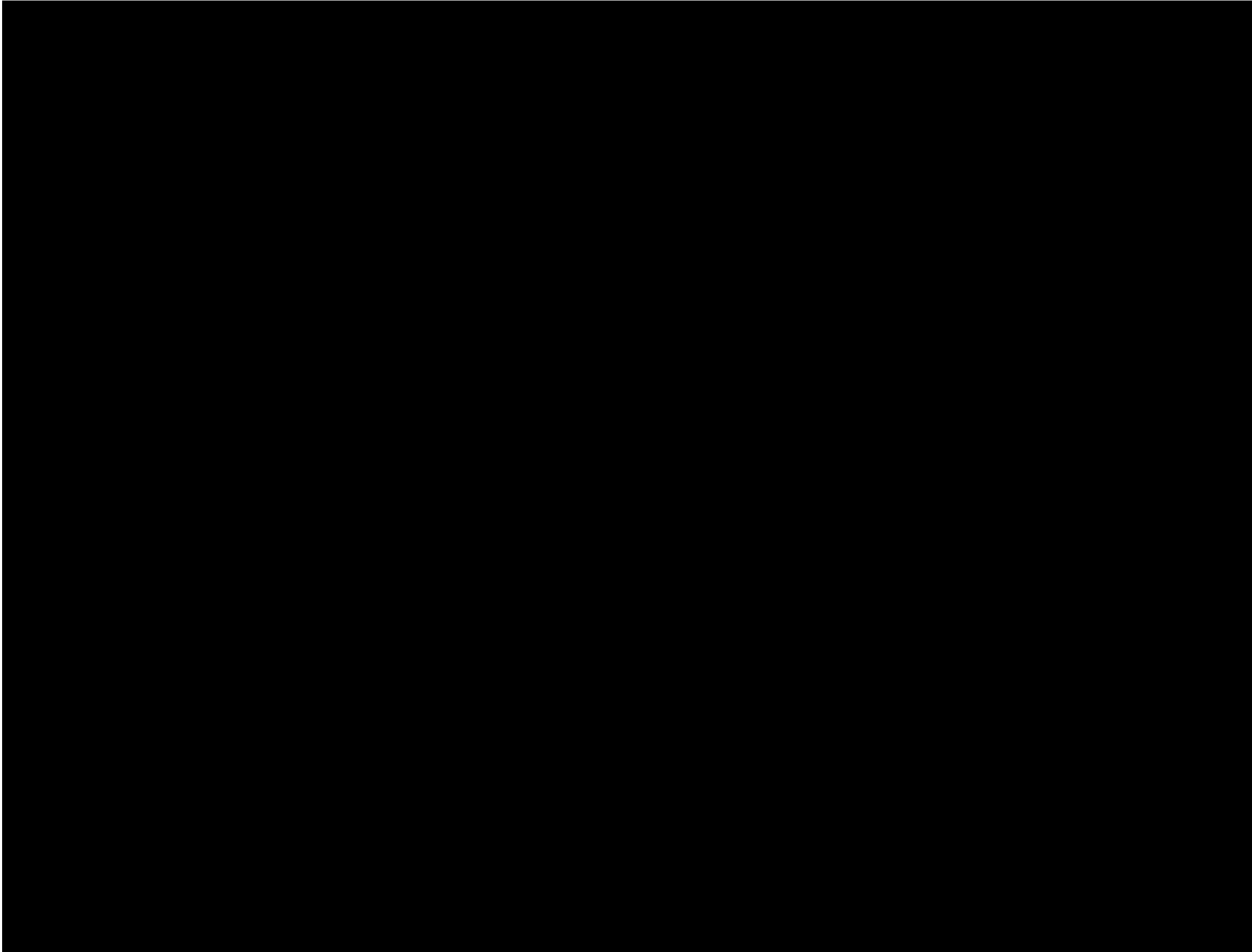
$$[19][A]-[19][AC] = \text{Sum of } [1]:[8].$$

From EX-2058.

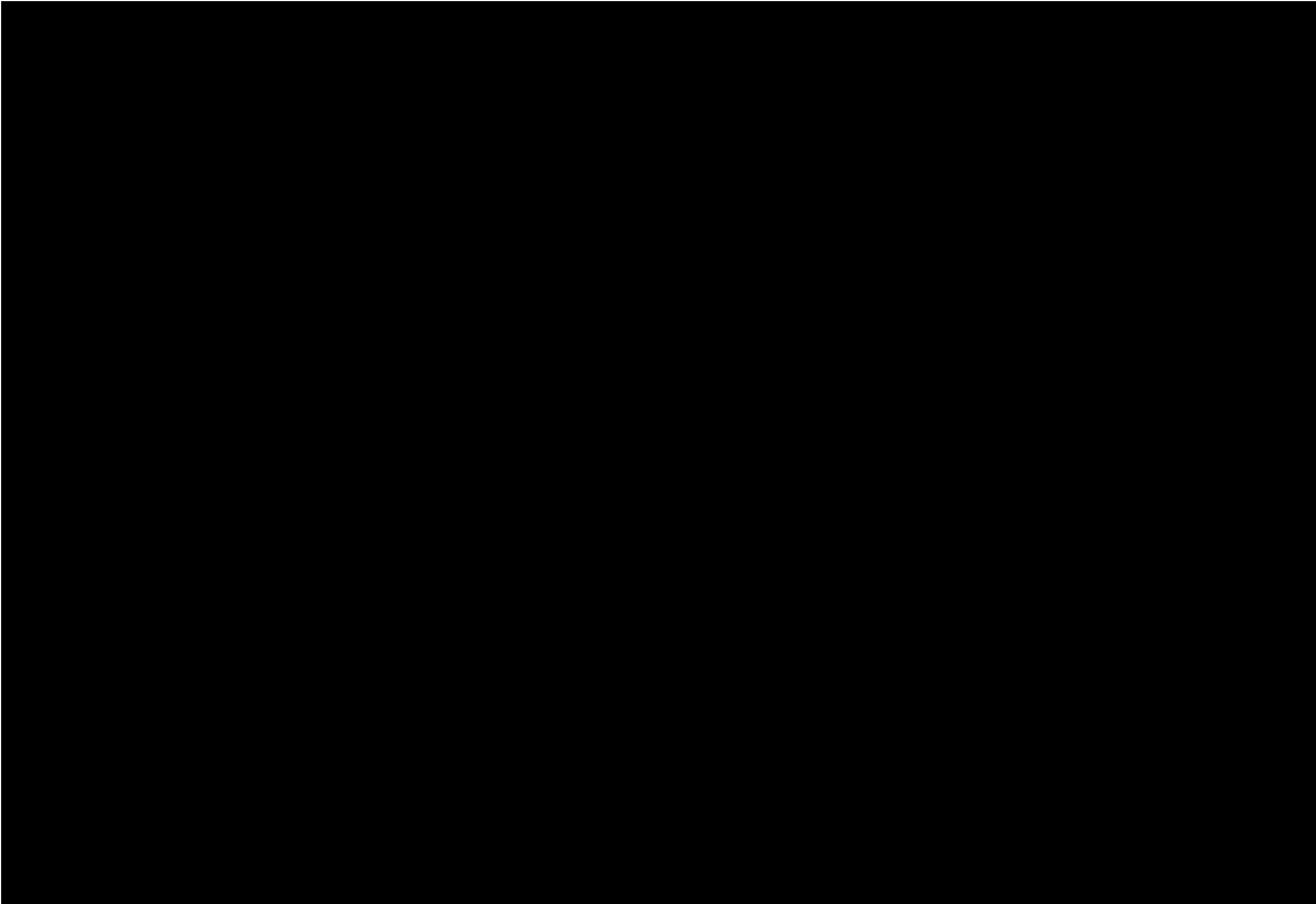
APPENDIX 10



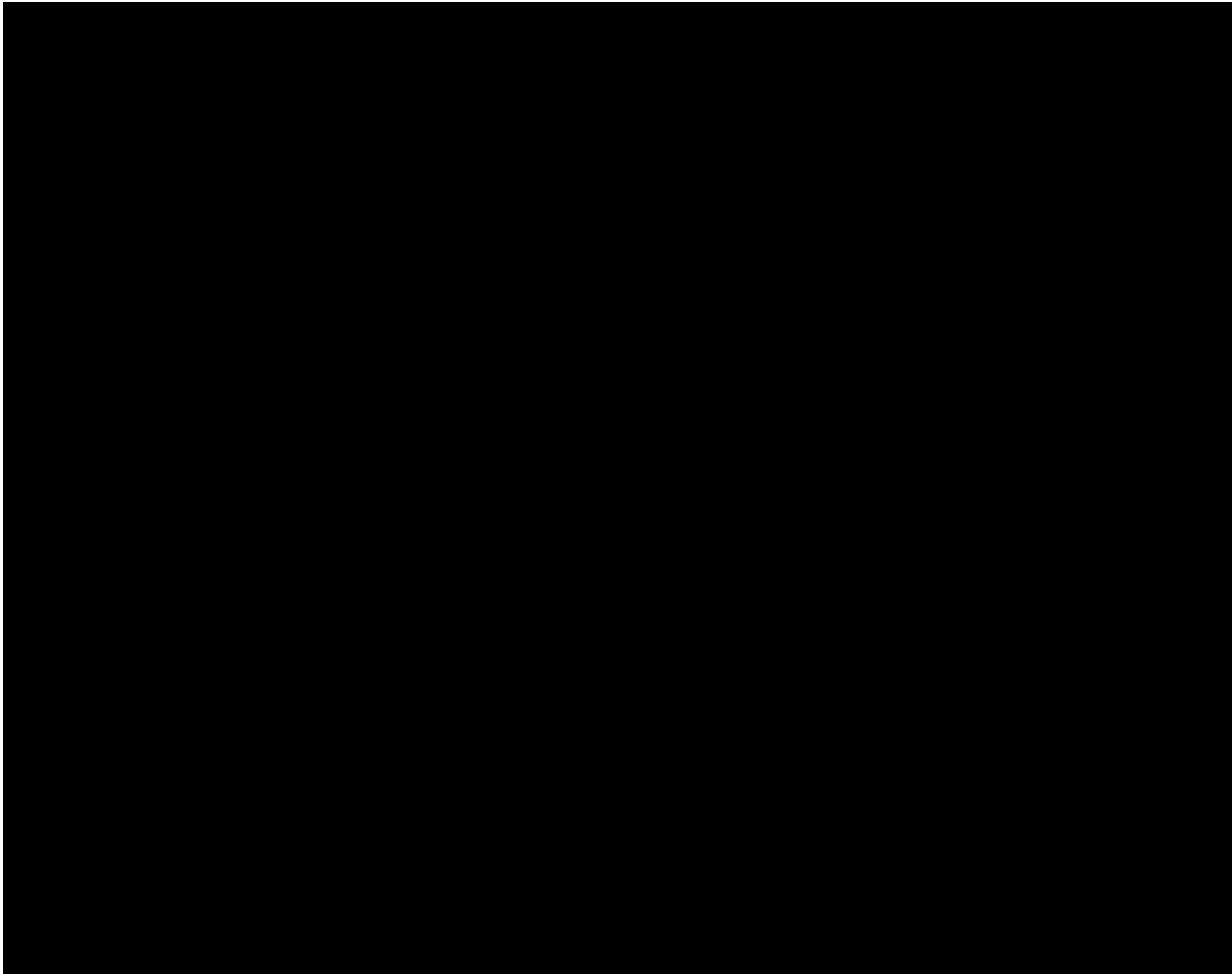
APPENDIX 11



APPENDIX 11



APPENDIX 12



APPENDIX 13

EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
U.S. UNIT SALES
Q1 2017 – Q2 2022

[illegible]

APPENDIX 13

EYE REDNESS RELIEVERS

IRI POINT-OF-SALE DATA

U.S. UNIT SALES

Q1 2017 – Q2 2022

[illegible]

Notes & Sources:

Data include U.S. sales from retail stores across multiple channels (e.g., food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (i.e., purchases made online and shipped to the customer). Units in the IRI POS data refer to packages. One package with two bottles would be recorded as one unit. (EX-2023, ¶32.)

Data are reported in 13-week increments but are shown quarterly.

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q2 2018 – Q2 2022. (See Appendix 9.)

[AD] = ((Q2 2022 Unit Sales / Q3 2018 Unit Sales)^(1/3.75))-1. The number of years between Q3 2018 and Q2 2022 is 3.75.

[AE] = ((Q2 2022 Unit Sales / Q1 2019 Unit Sales)^(1/3.25))-1. The number of years between Q1 2019 and Q2 2022 is 3.25.

[1] Lumify launched in May 2018. (See EX-2103.)

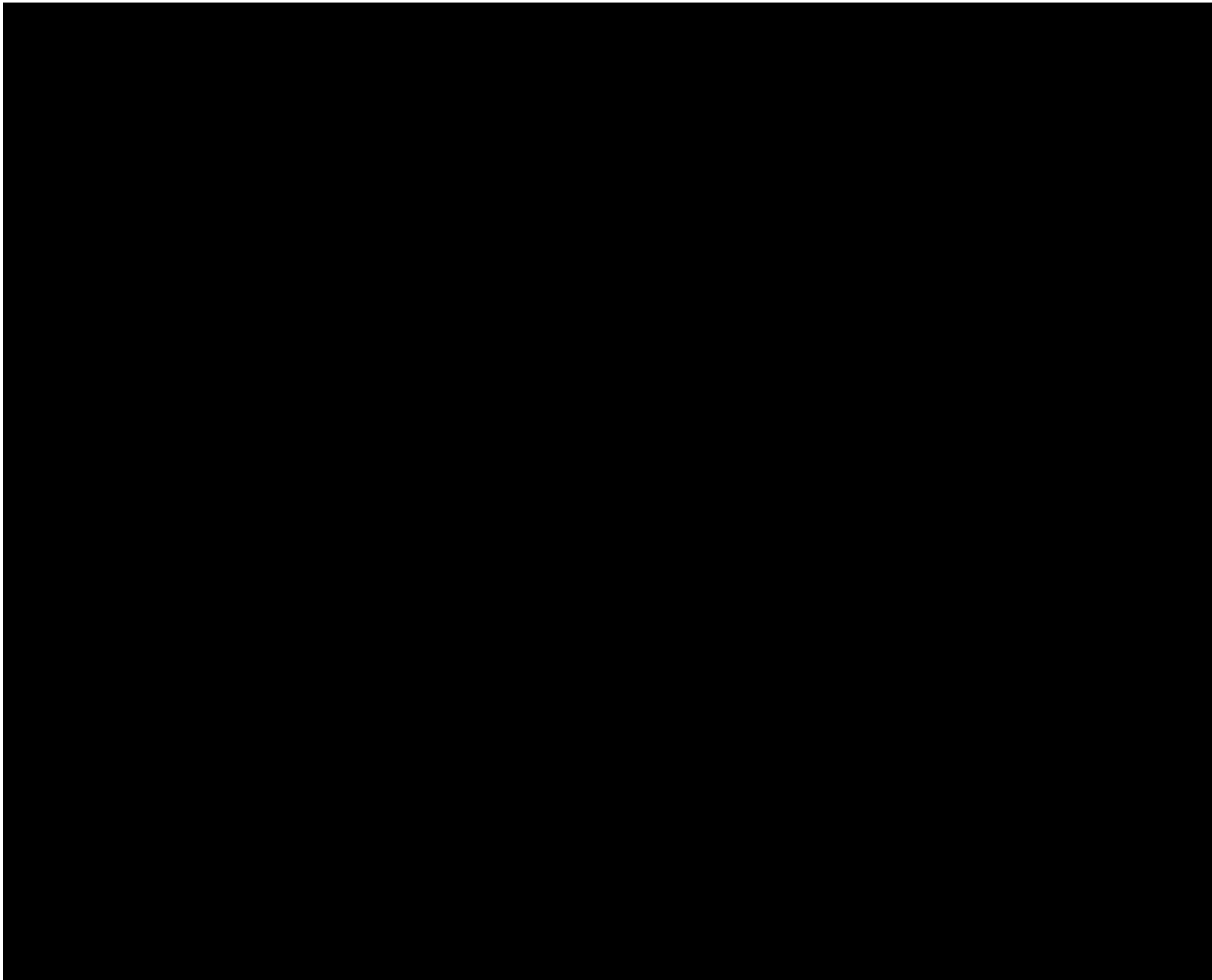
[5] Refers to product 'PL RED R.'

[8][A]-[8][AC] = Sum of [9]:[18].

$$[19][A]-[19][AC] = \text{Sum of } [1]:[8].$$

From EX-2058.

APPENDIX 14



APPENDIX 15

**EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
SHARE OF U.S. UNIT SALES
Q1 2017 – Q2 2022**

[illegible]

APPENDIX 15

**EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
SHARE OF U.S. UNIT SALES
Q1 2017 – Q2 2022**

[illegible]

Notes & Sources:

Data include U.S. sales from retail stores across multiple channels (e.g., food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (i.e., purchases made online and shipped to the customer). Units in the IRI POS data refer to packages. One package with two bottles would be recorded as one unit. (EX-2023, ¶32.)

Data are reported in 13-week increments but are shown quarterly.

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q2 2018 – Q2 2022. (See Appendix 9.)

A value of "-" represents 0% and a value of "0.0%" represents a rounded value greater than 0%.

[1] Lumify launched in May 2018. (See EX-2103.)

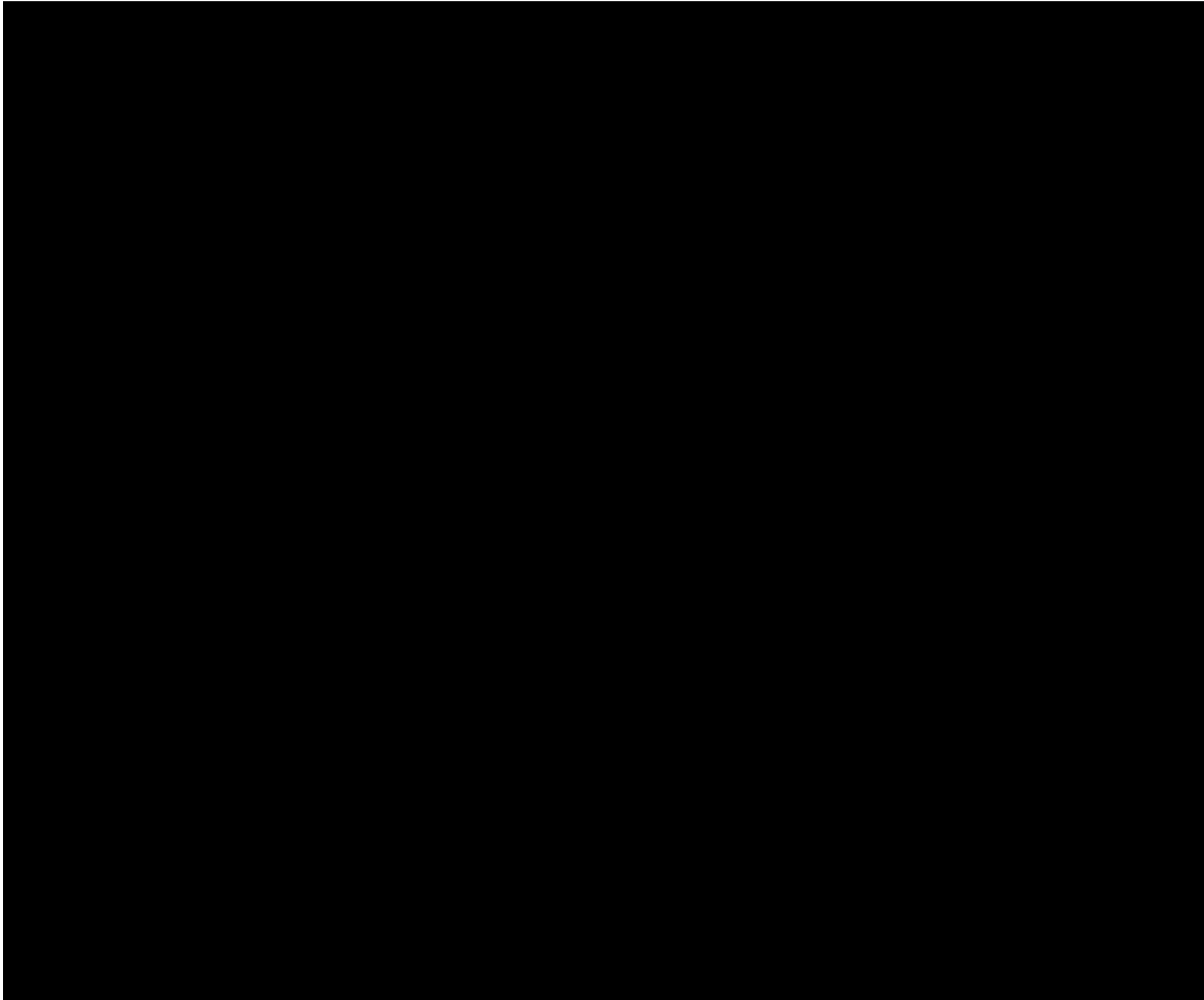
[5] Refers to product 'PL RED R.'

[8] = Sum of [9]:[18].

[19] = Sum of [1]:[8].

From Appendix 13.

APPENDIX 16



APPENDIX 17

EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
U.S. PRICE PER UNIT
Q1 2017 – Q2 2022

[illegible]

APPENDIX 17

**EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
U.S. PRICE PER UNIT
Q1 2017 – Q2 2022**

[illegible]

Notes & Sources:

Data include U.S. sales from retail stores across multiple channels (e.g., food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (i.e., purchases made online and shipped to the customer). Units in the IRI POS data refer to packages. One package with two bottles would be recorded as one unit. (EX-2023, ¶32.)

Data are reported in 13-week increments but are shown quarterly.

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q2 2018 – Q2 2022. (See Appendix 9.)

Yearly and Cumulative Totals calculated as dollar sales from Appendix 9 divided by unit sales from Appendix 13.

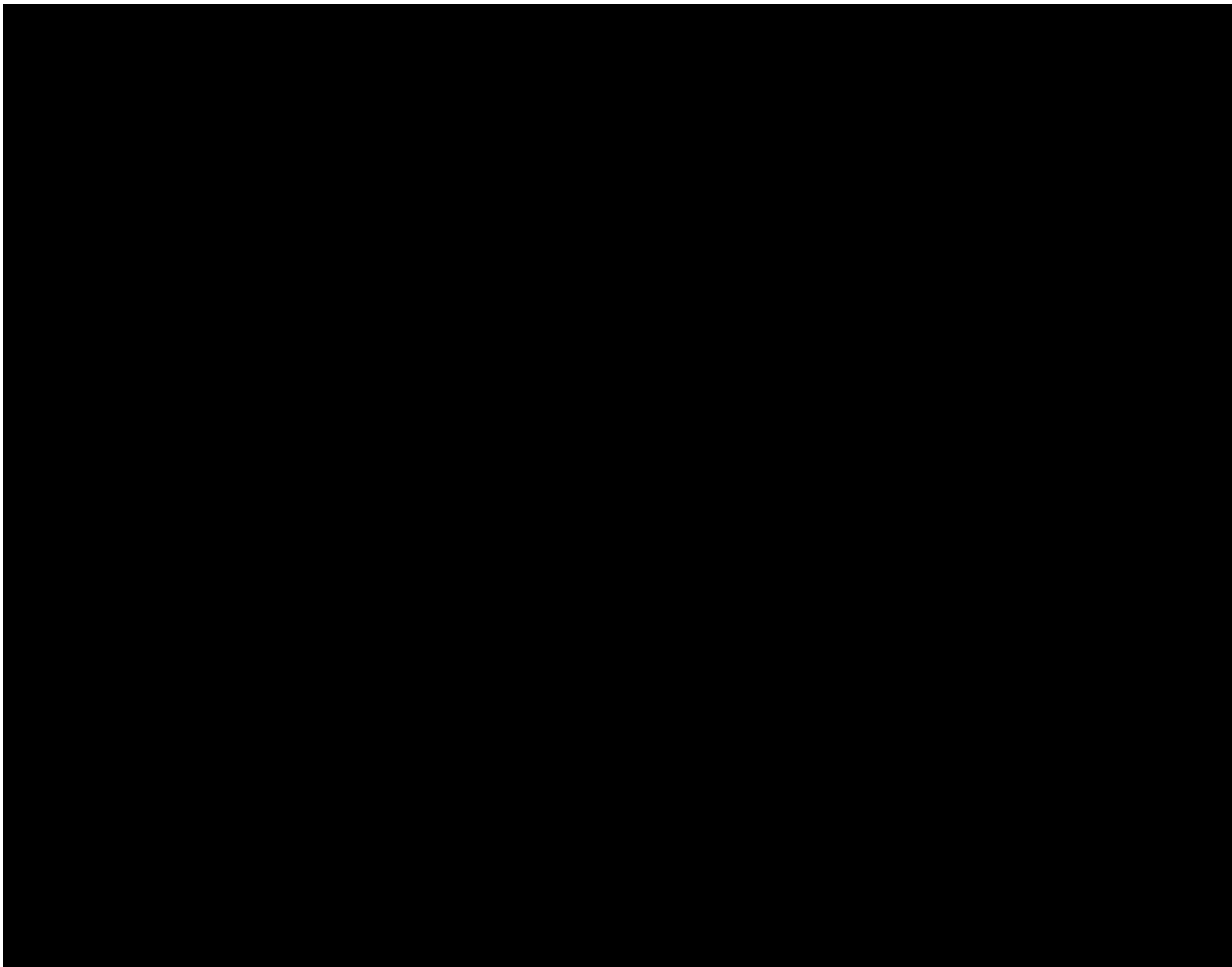
[1] Lumify launched in May 2018. (See EX-2103.)

[5] 'Refers to product 'PL RED R.'

[8] Calculated as dollar sales for 'Other' from Appendix 9 divided by unit sales for 'Other' from Appendix 13.

[19] Calculated as dollar sales for 'Total' from Appendix 9 divided by unit sales for 'Total' from Appendix 13. From EX-2058.

APPENDIX 18



APPENDIX 19

EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
U.S. VOLUME SALES (IN FLUID OUNCES)
Q1 2017 – Q2 2022

[illegible]

APPENDIX 19

EYE REDNESS RELIEVERS

IRI POINT-OF-SALE DATA

U.S. VOLUME SALES (IN FLUID OUNCES)

Q1 2017 – Q2 2022

[illegible]

Notes & Sources:

Data include U.S. sales from retail stores across multiple channels (e.g., food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (i.e., purchases made online and shipped to the customer). (EX-2023, ¶32.)

Data are reported in 13-week increments but are shown quarterly.

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q2 2018 – Q2 2022. (See Appendix 9.)

[AD] = ((Q2 2022 Volume Sales / Q3 2018 Volume Sales)^(1/3.75))-1. The number of years between Q3 2018 and Q2 2022 is 3.75.

[AE] = ((Q2 2022 Volume Sales / Q1 2019 Volume Sales)^(1/3.25))-1. The number of years between Q1 2019 and Q2 2022 is 3.25.

[1] Lumify launched in May 2018. (See EX-2103.)

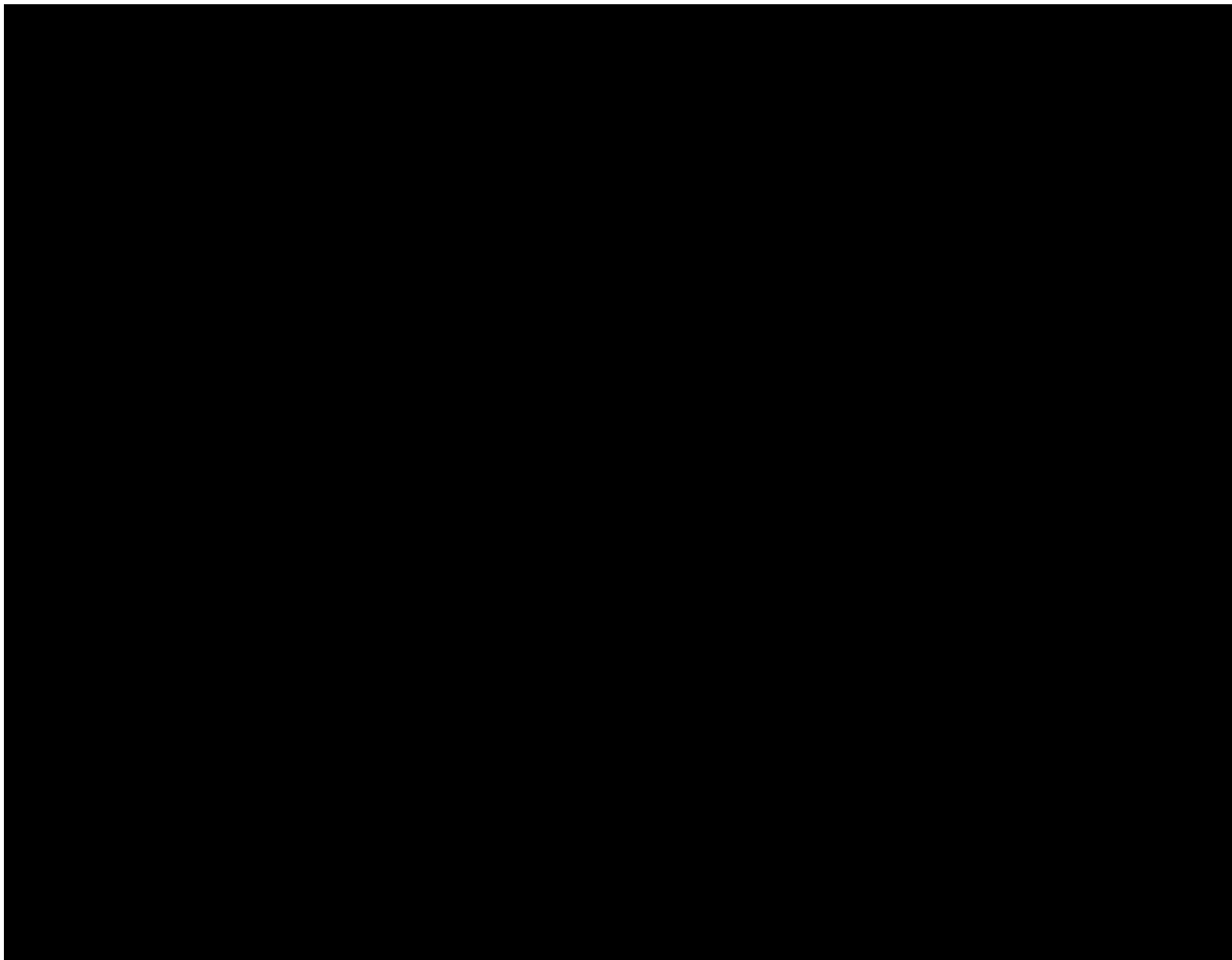
[5] Refers to product 'PL RED R.'

[8][A]-[8][AC] = Sum of [9]:[18].

$$[19][A]-[19][AC] = \text{Sum of } [1]:[8].$$

From EX-2058.

APPENDIX 20



APPENDIX 21

EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
SHARE OF U.S. VOLUME SALES (IN FLUID OUNCES)
Q1 2017 – Q2 2022

[illegible]

APPENDIX 21

EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
SHARE OF U.S. VOLUME SALES (IN FLUID OUNCES)
Q1 2017 – Q2 2022

[illegible]

Notes & Sources:

Data include U.S. sales from retail stores across multiple channels (e.g., food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (i.e., purchases made online and shipped to the customer). (EX-2023, ¶32.)

Data are reported in 13-week increments but are shown quarterly.

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q2 2018 – Q2 2022. (See Appendix 9.)

A value of "-" represents 0% and a value of "0.0%" represents a rounded value greater than 0%.

[1] Lumify launched in May 2018. (See EX-2103.)

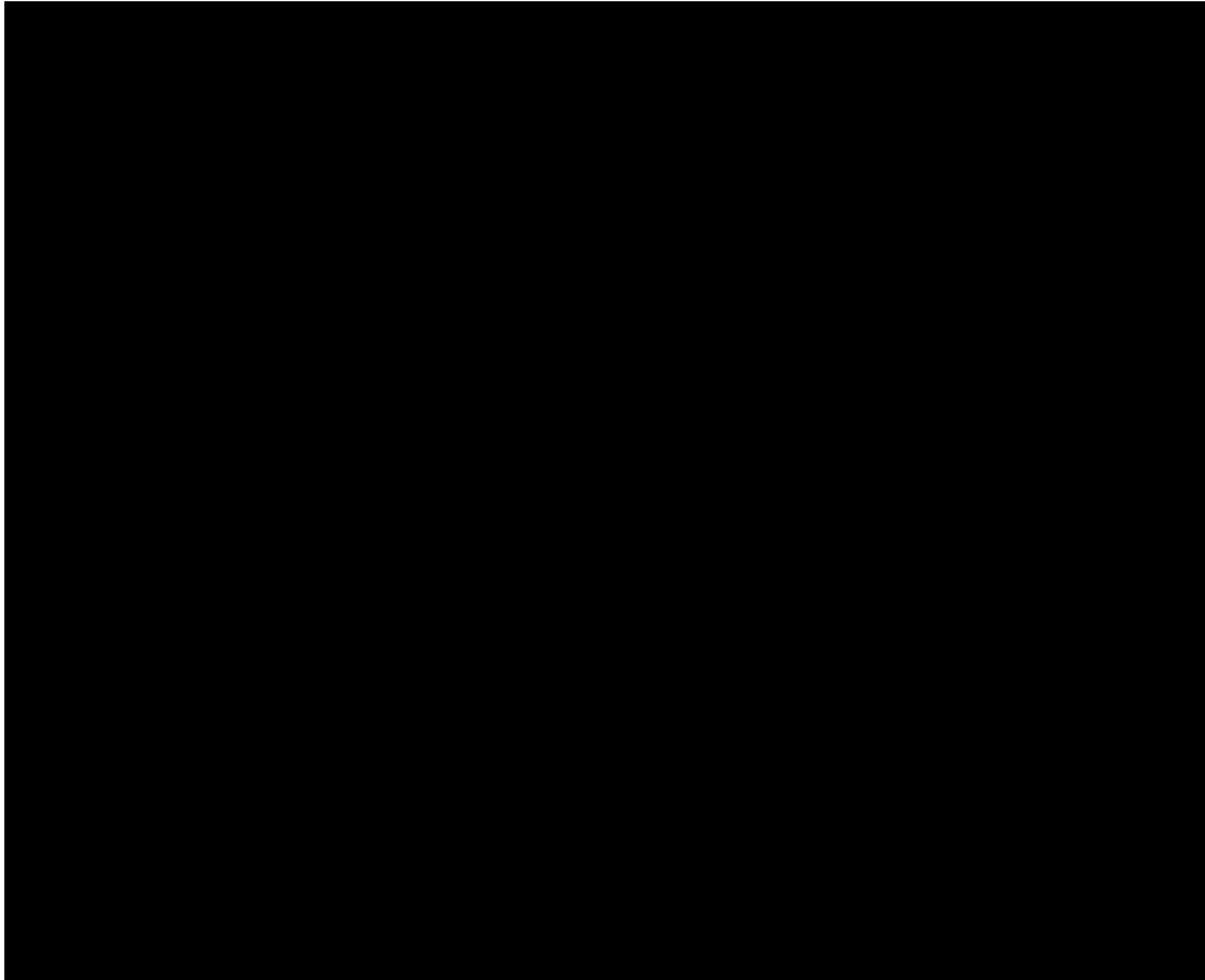
[5] Refers to product 'PL RED R.'

[8] = Sum of [9]:[18].

[19] = Sum of [1]:[8].

From Appendix 19.

APPENDIX 22



Q1 2017 – Q2 2022

[illegible]

APPENDIX 23

EYE REDNESS RELIEVERS
IRI POINT-OF-SALE DATA
U.S. PRICE PER FLUID OUNCE
Q1 2017 – Q2 2022

[illegible]

Notes & Sources:

Data include U.S. sales from retail stores across multiple channels (e.g., food channel, drug channel, mass channel, and selected club retailers), but do not include online-exclusive sales (i.e., purchases made online and shipped to the customer). (EX-2023, ¶32.)

Data are reported in 13-week increments but are shown quarterly.

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q2 2018 – Q2 2022. (See Appendix 9.)

Yearly and Cumulative Totals calculated as dollar sales from Appendix 9 divided by volume sales from Appendix 19.

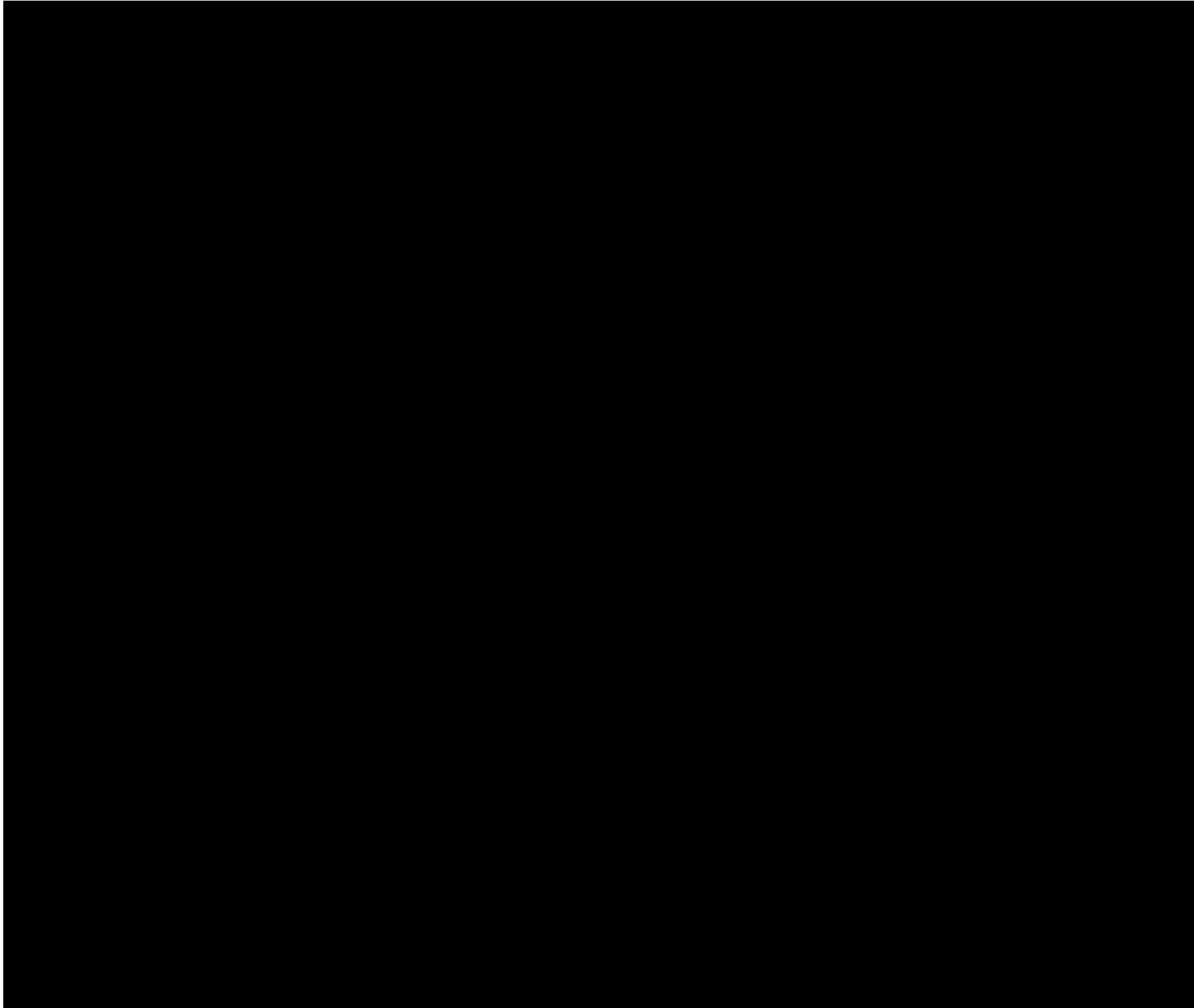
[1] Lumify launched in May 2018. (See EX-2103.)

[5] Refers to product 'PL RED R.'

[8] Calculated as dollar sales for 'Other' from Appendix 9 divided by unit sales for 'Other' from Appendix 19.

[19] Calculated as dollar sales for 'Total' from Appendix 9 divided by unit sales for 'Total' from Appendix 19. From EX-2058.

APPENDIX 24



APPENDIX 25

EYE REDNESS RELIEVERS

IRI PANEL DATA

U.S. DOLLAR SALES

Q1 2018 – Q1 2022

[illegible]

Notes & Sources:

Data include U.S. sales from all outlets, across both brick-and-mortar and online channels. (EX-2023, ¶31.)

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q1 2018 – Q1 2022.

[1] Lumify launched in May 2018. (See EX-2103.)

[7] 'Total' is based upon the entry in the data called 'RED R.' and is assumed to encompass more products than listed above, so the sum of [1]:[6] will not match [7]. From EX-2057.

APPENDIX 26

EYE REDNESS RELIEVERS
IRI PANEL DATA
SHARE OF U.S. DOLLAR SALES
Q1 2018 – Q1 2022

[illegible]

Notes & Sources:

Data include U.S. sales from all outlets, across both brick-and-mortar and online channels. (EX-2023, ¶31.)

Data have been sorted in descending order of total U.S. Dollar Sales for the period Q1 2018 – Q1 2022. (See Appendix 25.)

[1] Lumify launched in May 2018. (See EX-2103.)

[7] 'Total' is based upon the entry in the data called 'RED R.' and is assumed to encompass more products than listed above, so the sum of [1]:[6] will not match [7]. From Appendix 25.

APPENDIX 27

