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Transcript of John Jarosz

Date: November 11, 2022

Case: Slayback Pharma LLC -v- Eye Therapies LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of John Jarosz
November 11, 2022

1 (1 to 4)

1	1	1	3
1	UNITED STATES PATENT AND TRADEMARK OFFICE	1	A P P E A R A N C E S
2	-----	2	ON BEHALF OF THE PETITIONER, SLAYBACK PHARMA,
3	BEFORE THE PATENT TRIAL AND APPEAL BOARD	3	LLC:
4	-----	4	ROBERT FREDERICKSON, ESQUIRE
5	SLAYBACK PHARMA LLC,	5	CHRISTOPHER CASSELLA, ESQUIRE
6	Petitioner,	6	GOODWIN PROCTER, LLP
7	v.	7	100 Northern Avenue
8	EYE THERAPIES, LLC,	8	Boston, Massachusetts 02210
9	Patent Owner.	9	617.570.1947
10	-----	10	
11	Case IPR2022-00142	11	ON BEHALF OF THE PATENT OWNER, EYE THERAPIES,
12	Patent 8,293,742	12	LLC:
13	-----	13	JUSTIN J. HASFORD, ESQUIRE
14	Deposition of JOHN JAROSZ	14	FINNEGAN HENDERSON FARABOW GARRETT & DUNNER,
15	Conducted Remotely	15	LLP
16	Friday, November 11, 2022	16	901 New York Avenue, NW
17	9:06 a.m.	17	Washington, D.C. 20001
18		18	202.408.4175
19		19	
20	Job No.: 468949	20	ALSO PRESENT:
21	Pages: 1-111	21	EMILY DUNN - REMOTE TECHNICIAN
22	Reported by: Matthew Goldstein, RMR, CRR	22	KYLAN BARRY - VIDEOGRAPHER
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1	Deposition of JOHN JAROSZ, conducted	1	C O N T E N T S
2	remotely:	2	EXAMINATION OF JOHN JAROSZ PAGE
3		3	
4		4	By MR. FREDERICKSON 7
5		5	By MR. HASFORD 105
6		6	E X H I B I T S
7		7	(Attached)
8		8	JAROSZ DEPOSITION EXHIBIT PAGE
9	Pursuant to Notice, before Matthew Goldstein,	9	
10	RMR, CRR, Notary Public in and for the State of	10	Exhibit 1001 United States Patent No. 27
11	Maryland.		8,293,742 B2
12		11	Exhibit 2023 Declaration of John Ferris 46
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		22	

5 1 THE REMOTE TECHNICIAN: Thank you to 2 everyone for attending this proceeding remotely 3 which we anticipate will run smoothly. And please 4 remember to speak slowly and do your best not to 5 talk over one another. And please be aware that 6 we are recording this proceeding for backup 7 purposes. 8 Any off-the-record discussions should be 9 had away from the computer. And please remember 10 to mute your mic for those conversations. Please 11 have your video enabled to help the reporter 12 identify who is speaking. If you are unable to 13 connect with video and are connecting via phone, 14 please identify yourself each time before 15 speaking. 16 I apologize in advance for any 17 technical-related interruptions. 18 Thank you. 19 THE VIDEOGRAPHER: Please stand by for 20 video. 21 Here begins Media No. 1 in the 22 videotaped deposition of John C. Jarosz, in the	7 1 PROCEEDINGS 2 Whereupon, 3 JOHN JAROSZ, 4 being first duly sworn or affirmed to testify to 5 the truth, the whole truth, and nothing but the 6 truth, was examined and testified as follows: 7 EXAMINATION BY COUNSEL FOR THE PETITIONER 8 BY MR. FREDERICKSON: 9 Q. Thank you. 10 Good morning, Mr. Jarosz. 11 A. Good morning. 12 Q. Have you been deposed before? 13 A. In other matters, yes. 14 Q. Approximately how many times? 15 A. Approximately 300 times over the years. 16 Q. Have you been deposed remotely before? 17 A. Yes. 18 Q. Okay. So you're familiar with the new 19 normal in the remote deposition world. And I'm 20 sure you're familiar with the ground rules of the 21 deposition. But if you have any questions, please 22 let me know, about the process or the procedure.
6 1 matter of Slayback Pharma LLC versus Eye Therapies 2 LLC, Case No. IPR 2022-00142. 3 Today's date is November 11th, 2022. 4 The time on the video monitor is 9:06 a.m. 5 The remote videographer today is Kylan 6 Barry, representing Planet Depos. 7 All parties of this video deposition are 8 attending remotely. 9 Would counsel please voice identify 10 themselves and state whom they represent. 11 MR. FREDERICKSON: Robert Frederickson 12 from Goodwin Procter representing the petitioner, 13 Slayback Pharma LLC. Also on the line is 14 Christopher Cassella from Goodwin Procter, as 15 well. 16 MR. HASFORD: Justin Hasford of Finnegan 17 on behalf of patent owner. 18 THE VIDEOGRAPHER: The court reporter 19 today is Matthew Goldstein, representing Planet 20 Depos. 21 Would the reporter please swear in the 22 witness.	8 1 A. I'm not sure if there's a question, but 2 I think I understand the process. 3 Q. Okay. Just because I'm not in the room 4 with you, can you let me know who else is present 5 in the room with you? 6 A. Justin Hasford. 7 Q. Anyone else? 8 A. No. 9 Q. I see you have a piece of paper in front 10 of you. I think we discussed off the record that 11 that's a copy of your declaration in this 12 proceeding; is that correct? 13 A. Yes, except it's not one piece of paper. 14 It's a copy of my declaration and appendices. 15 Q. Okay. Is there any notations or marking 16 in that document? 17 A. You can see that I'm just looking at it 18 very quickly, but there do not appear to be any 19 notations. 20 Q. Great. 21 And can you confirm that what you're 22 looking at is Exhibit 2024, the declaration of

9 1 John C. Jarosz? 2 A. That appears to be the case, yes. 3 (Jarosz Deposition Exhibit 2024 was 4 marked for identification and attached to the 5 transcript.) 6 BY MR. FREDERICKSON: 7 Q. You understand that during the course of 8 the deposition, particularly when we're on the 9 record, like the court reporter is transcribing 10 and I'm asking questions, you're not to 11 communicate by anyone through any means that 12 wouldn't be perceivable to me. 13 Do you understand that? 14 A. Yes. 15 Q. And if someone does try to communicate 16 with you via in the room that I can't see or via 17 any electronic messages, will you let me know? 18 A. Yes. 19 Q. Great. 20 When were you first retained to submit 21 an expert declaration in this matter? 22 A. Our firm was first retained to do an	11 1 about March. It could have been earlier than 2 that. It might have been later than that. 3 Q. Who wrote Exhibit 2024? 4 A. I did in the sense that I was 5 supervising and responsible for everything in it. 6 I worked with a colleague or two of mine in doing 7 the prose of the report and the underlying 8 analysis. 9 Q. Who are those colleagues? 10 A. The one that comes to mind right now is 11 Yao Lu. I think also involved was Su Jin Kim. 12 And it's possible Jonas Blomberger was involved. 13 Q. What was Yao Lu's role in drafting 14 Exhibit 2024? 15 A. She had responsibility for undertaking 16 the analysis here. So her role was to 17 conceptualize and oversee all the analyses and 18 summaries of our conclusions. 19 Q. What was Su Jin Kim's role in preparing 20 Exhibit 2024? 21 A. She's less senior than Yao Lu is. And 22 she was involved in looking at much of the
10 1 analysis on commercial success issues some number 2 of months ago. I've lost track of how many months 3 ago, but my best current estimate was that it was 4 six months ago, give or take two months. I could 5 be wrong, however. 6 Q. Would you say that it could have been as 7 early as March 2022 and as late as July of 2022? 8 MR. HASFORD: Object to the extent it 9 mischaracterizes the witness' testimony. 10 THE WITNESS: March 2022 is six months 11 ago. It could have been more than that, in other 12 words, earlier than that in time. 13 BY MR. FREDERICKSON: 14 Q. If you look at the last page of your 15 declaration, page 66 of the text, you'll see that 16 it's dated August 26th, 2022. 17 Do you see that? 18 A. Yes. 19 Q. How much in advance of August 26th, 20 2022, were you retained to offer an expert 21 declaration in this matter? 22 A. As I said a few moments ago, it was in	12 1 underlying information assisting with the report 2 production and probably having more day-to-day 3 responsibility for the construction of the 4 appendices. 5 Q. I might have written down his last name 6 wrong, but what was Jonas Bloomberg's role? 7 A. Jonas Blomberger. His role was very 8 similar to Su Jin Kim's. I would probably use the 9 same words to the extent that he was involved. 10 And I'm right now not clear who spent more time, 11 whether it was Su Jin Kim or Jonas Blomberger. 12 Q. Other than those three people that 13 you -- those three people, are they all employees 14 of Analysis Group? 15 A. Yes. 16 Q. Okay. Other than those three employees 17 of Analysis Group, did anyone else contribute to 18 the drafting of Exhibit 2024? 19 A. Well, there were people that were 20 involved in constructing the appendices and doing 21 checks of the prose of the report. I don't think 22 those people were as intimately involved in

13 1 helping draft the prose of the report. 2 Q. What about individuals not employed by 3 Analysis Group, were there any individuals that 4 contributed to the drafting of the declaration 5 other than employees of Analysis Group? 6 A. I think there were people at Finnegan 7 Henderson who took a look at some drafts and 8 helped us with understanding if there was a 9 misunderstanding we had of any of the facts. It's 10 possible that one or more people at Bausch+Lomb 11 looked at it for similar reasons. 12 Q. Other than attorneys employed by 13 Finnegan and individuals employed by Analysis 14 Group, did you speak with anyone else in the 15 preparation of your declaration? 16 A. Yes. 17 Q. Who did you speak with? 18 A. Ms. Kristi McIntyre. 19 Q. Who is Kristi McIntyre? 20 A. She's in-house counsel at Bausch+Lomb. 21 I forget the precise entity. I don't know her 22 precise title.	15 1 MR. HASFORD: Same caution. 2 THE WITNESS: I don't have anything in 3 particular in mind. 4 BY MR. FREDERICKSON: 5 Q. What about underlying data, what 6 underlying data did you seek further understanding 7 of? 8 MR. HASFORD: Same caution. 9 THE WITNESS: I think I can generally 10 say it was sought to understand the IRI data and 11 the difference between the point-of-sale and panel 12 data. In the process of doing that, we might have 13 had a conversation with somebody else at 14 Bausch+Lomb to understand those data. 15 BY MR. FREDERICKSON: 16 Q. Do you know who that was? 17 A. Sitting here right now, I don't recall. 18 It's possible it was Mr. Ferris, but I'm not very 19 confident of that. But it's possible. 20 Q. Sitting here today, do you have a 21 recollection of having a conversation with 22 Mr. Ferris?
14 1 Q. And what was the subject matter of 2 those -- how many conversations did you have with 3 Kristi McIntyre? 4 A. Something on the order of two or three. 5 Q. How long were those conversations? 6 A. I don't have a very sharp recollection 7 of those, but my best guess is something on the 8 order of half an hour to 45 minutes. 9 Q. Each or in total? 10 A. Each, although each one may have been 11 appreciably shorter than that. 12 Q. What was the subject matter of those 13 conversations? 14 MR. HASFORD: And I'll just caution you 15 not to disclose any specific conversations that 16 you may have had with Kristi McIntyre. 17 THE WITNESS: The conversations were 18 oriented to understanding some of the underlying 19 facts and the underlying data. 20 BY MR. FREDERICKSON: 21 Q. What underlying facts did you seek to 22 further understand from Kristi McIntyre?	16 1 A. Not a very sharp recollection. I would 2 only say with medium confidence that I had a 3 conversation with him. 4 Q. And just to make sure I have the name, 5 that was Kristi McIntyre? Is that the attorney 6 that you spoke with? 7 A. Yes. 8 Q. Other than Kristi McIntyre and possibly 9 John Ferris, did you speak with anyone else to 10 prepare your declaration? 11 A. As I said a moment ago, there might have 12 been another person at Bausch+Lomb that we talked 13 to in the context of understanding the data. And 14 I'm not sure whether it was in the context of the 15 PTAB matter or the district court matter. So I'm 16 a little bit unclear -- or uncertain whether it 17 was specifically having to do with the PTAB 18 matter. 19 Q. In the course of preparing your 20 declaration, did you speak with anyone employed by 21 Eye Therapies? 22 A. I don't think so.

17 1 Q. Have you reviewed any deposition 2 testimony from this matter? 3 A. Yes. 4 Q. What deposition testimony have you 5 reviewed? 6 A. I reviewed the rough draft of 7 Mr. Ferris' deposition testimony. 8 Q. Any other deposition testimony? 9 A. If you give me one moment, I will try to 10 refresh my recollection by looking at Appendix 2. 11 I don't think so, although of course my 12 memory is not perfect. 13 Q. In the course of preparing your 14 declaration for this matter, did you speak with 15 any of the other experts retained by Bausch and 16 Eye Therapies? 17 A. Not to the best of my memory. 18 Q. I understand you reviewed a declaration 19 from a Dr. Robert Noecker; is that correct? 20 A. Yes. 21 Q. Did you ever speak with Dr. Robert 22 Noecker?	19 1 did not, but I don't say that with great 2 certainty. 3 Q. Did you review the declarations of a 4 Dr. Paul Laskar in forming your opinions in this 5 case? 6 A. Not to the best of my memory. 7 Q. Did you review the declaration of a 8 Dr. Neal Sher? 9 A. Not to the best of my memory. 10 Q. You referred to Appendix 2 a couple of 11 times to your declaration. What is Appendix 2? 12 A. It is a listing of materials considered. 13 Q. Is it a listing of materials that you 14 considered in the preparation of your declaration? 15 A. Yes. 16 Q. Are there any materials that you 17 considered in forming your opinions in this case 18 that you did not list in Appendix 2? 19 A. I don't think so, although I've been 20 involved in this kind of work for many years. 21 There are things in my memory banks that I 22 impliedly or subconsciously might have relied
18 1 A. I don't believe so. 2 Q. Have you reviewed any deposition 3 testimony from Dr. Noecker? 4 A. I don't think so. I wasn't aware that 5 his deposition had been taken in this matter. 6 Q. Have you reviewed the declaration of a 7 Dr. Robert Williams? 8 A. I don't believe so, no. 9 Q. Have you reviewed the declaration of a 10 Dr. Stephen Davies? 11 A. I don't think so, but for that question 12 and the prior, let me look at my Appendix 2 to 13 refresh my memory. 14 I think the answer is no, I did not, to 15 the best of my memory. 16 Q. In the course of forming your opinions 17 in your declaration, did you review the petition 18 for inter partes review that was filed by Slayback 19 in this matter? 20 A. I have a vague memory of having done 21 that, but it doesn't appear to be identified in my 22 Appendix 2, which makes me think that I probably	20 1 upon. But the things that are explicitly related 2 to this matter, we intended to identify entirely 3 in Appendix 2. 4 Q. Why didn't you include the conversations 5 that you had with Kristi McIntyre in your 6 Appendix 2? 7 MR. HASFORD: Objection to the form of 8 the question. 9 THE WITNESS: I don't usually, and I 10 don't recall having relied on anything that I 11 learned from those conversations that impacted the 12 substance of my work or conclusions. 13 When I said "I don't usually," to be 14 more specific, I don't usually cite conversations 15 that I've had with counsel, whether internal or 16 external. It might be that they're covered by 17 privilege. In many instances like this, I didn't 18 rely on those conversations for the substance of 19 my work or opinions. 20 BY MR. FREDERICKSON: 21 Q. Did Kristi McIntyre provide you any 22 factual information that was relevant to your

21 1 opinions? 2 MR. HASFORD: Object to the form of the 3 question. 4 THE WITNESS: There's nothing 5 specifically that comes to mind. 6 BY MR. FREDERICKSON: 7 Q. Can we turn to paragraph 37 of your 8 declaration, Exhibit 2024. 9 A. I'm there. 10 Q. Paragraph 37, the first sentence reads, 11 "I understand that Lumify is a commercial 12 embodiment of certain claims of the '742 patent." 13 Do you see that? 14 A. Yes. 15 Q. Where did you receive that understanding 16 from? 17 A. Probably Exhibit 2020 at paragraphs 226, 18 301, 311, and from patent owner's preliminary 19 response at 31 and 32. Now, I do have to say if 20 2020, Exhibit 2020, is the Noecker declaration, a 21 large number of the paragraph numbers are slightly 22 off in my final report versus his final	23 1 BY MR. FREDERICKSON: 2 Q. The reason there are miscitations to the 3 Noecker declaration is because you and your team 4 were citing a draft declaration and those 5 paragraph numbers changed by the time Dr. Noecker 6 submitted his final declaration; is that right? 7 MR. HASFORD: Same objections. 8 THE WITNESS: I think that's right, but 9 I don't have a perfect memory of what happened at 10 the very end. 11 BY MR. FREDERICKSON: 12 Q. Now, and I think you said this in your 13 declaration, you are not a medical doctor; is that 14 right? 15 A. That's correct. 16 Q. And you've been retained to offer 17 opinions related to the issues of commercial 18 success; is that right? 19 A. I missed a little bit of what you said 20 before you said "commercial success." 21 Q. You've been retained to offer opinions 22 in this matter on the topic of commercial success;
22 1 declaration. 2 Q. And have you prepared any errata or 3 changes to those citations to update your 4 declaration? 5 A. I have not. I could do that. We 6 learned that there was some discrepancy in what 7 was cited versus what was in the final 8 declaration, but I've not put together an errata. 9 Q. Is that because when you were preparing 10 the declaration, your declaration, you had a draft 11 of Dr. Noecker's declaration? 12 A. I think it's probably right that I had a 13 near final but not final draft, correct, when I 14 was writing my final declaration. 15 Q. And the citations that may have been 16 miscited was because you were citing to paragraphs 17 in that draft that subsequently changed? 18 MR. HASFORD: Object to the form of the 19 question to the extent it mischaracterizes. 20 THE WITNESS: Would you mind asking that 21 again, please? 22	24 1 is that right? 2 A. Our firm was retained to do an analysis 3 of commercial success issues, and I was asked to, 4 if necessary, provide my opinions on the 5 conclusions that we drew. 6 Q. Are you offering opinions as -- 7 independent opinions that the product Lumify is 8 embodied of certain claims of the '742 patent? 9 A. No, I think that's a technical opinion. 10 And that's outside my area of expertise. 11 Q. And for those technical opinions, are 12 you principally relying on the opinions of 13 Dr. Noecker? 14 A. Yes. 15 Q. In paragraph 37, you say, "I understand 16 that Lumify is a commercial embodiment of certain 17 claims of the '742 patent." 18 Do you see that? 19 A. Yes. 20 Q. When you say "certain claims," which 21 claims are you referring to? 22 A. You'd have to ask Dr. Noecker.

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25 1 Q. If you go to paragraphs 38 and 39 of 2 your expert declaration, Exhibit 2024, you refer 3 to Claim 1 of the '742 patent. 4 Do you see that? 5 A. Yes. 6 Q. Other than Claim 1 of the '742 patent, 7 do you have an understanding if Lumify is a 8 commercial embodiment of any other claims? 9 A. Again, you'd have to ask Dr. Noecker on 10 that. I believe it's a commercial embodiment of 11 more than just Claim 1, but I'm just going off my 12 memory of what's in the Noecker declaration. 13 Q. When you formed your opinions and did 14 your analysis of commercial success, did you make 15 any effort to identify which specific claims are 16 embodied by Lumify as a commercial -- let me try 17 that again. 18 In forming your opinions and doing your 19 analysis in this case, did you undertake any 20 effort to determine which specific claims Lumify 21 is a commercial embodiment of? 22 MR. HASFORD: Object to the form.	27 1 that Lumify is a commercial embodiment of certain 2 claims of the '742 patent. 3 MR. FREDERICKSON: Can we take a look 4 at -- it's Exhibit 1001. It should be the '742 5 patent. We can put that on the screen. 6 (Jarosz Deposition Exhibit 1001 was 7 marked for identification and attached to the 8 transcript.) 9 MR. FREDERICKSON: And if we could 10 scroll to the last page where the claims are 11 listed. 12 It should be all the way at the end, 13 last page, 20 out of 20. We can go ahead and 14 maybe even zoom in a little bit just so the -- 15 yeah, the claims are showed there. Perfect. 16 BY MR. FREDERICKSON: 17 Q. And, Mr. Jarosz, can you see on the 18 screen Exhibit 1001, the six claims of the '742 19 patent? 20 A. Yes. 21 Q. Do you see Claim 4, "The method of 22 Claim 3 wherein said composition is topically
26 1 THE WITNESS: No, I'm relying on 2 Dr. Noecker for that expertise. That's beyond my 3 area of expertise. 4 BY MR. FREDERICKSON: 5 Q. And was it relevant to any of your 6 opinions whether there were particular claims of 7 the '742 patent that Lumify was not a commercial 8 embodiment of? 9 MR. HASFORD: Object to the form of the 10 question. 11 THE WITNESS: I'm aware of what's in the 12 Noecker declaration. 13 BY MR. FREDERICKSON: 14 Q. Did it matter for purposes of your 15 opinions to have an understanding of which 16 specific claims Lumify is a commercial embodiment 17 of and which specific claims Lumify may not be a 18 commercial embodiment of? 19 MR. HASFORD: Object to form. 20 THE WITNESS: It's interesting to me, 21 but I'm not sure that it impacts the conclusions 22 that I drew. I'm relying on Dr. Noecker's opinion	28 1 administered within about 24 hours after a LASIK 2 surgery on said patient"? 3 Do you see Claim 4? 4 A. Yes. 5 Q. Did you undertake any analysis to 6 determine how the frequency with which Lumify is 7 prescribed or administered within 24 hours after 8 LASIK surgery? 9 MR. HASFORD: Object to the form. 10 THE WITNESS: No, I'm not aware that 11 there's data on that. 12 BY MR. FREDERICKSON: 13 Q. Did you look -- 14 A. I understand it to be the case that 15 under the law the composition is equivalent to the 16 advantages of the patent. And at least the first 17 claim is an independent claim. 18 Q. My question was simply: Did you 19 undertake an analysis to determine the frequency 20 with which Lumify is administered to patients 21 within an amount 24 hours after LASIK surgery? 22 MR. HASFORD: Object to the form of the

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29 1 question. 2 THE WITNESS: At the risk of repeating 3 myself, no, I didn't undertake that particular 4 analysis, and I'm not aware of whether there's 5 data that would help one answer that question. 6 BY MR. FREDERICKSON: 7 Q. Do you know how many people undergo 8 LASIK surgery on a monthly or yearly or quarterly 9 basis in the United States? 10 A. I don't. I may have seen that, a 11 representation to that effect at some time over 12 the last two decades, but I haven't committed that 13 to memory. 14 Q. And that's not something that you 15 considered in forming your opinions in this case? 16 A. You mean the rate at which LASIK surgery 17 is performed? 18 Q. Correct. 19 A. No. 20 Q. Do you know how many patients take eye 21 drops following LASIK surgery? 22 A. No, and I'm not aware that there are	31 1 revenue associated with the use of Lumify 2 following LASIK surgery? 3 A. I don't believe I do, and I'm not aware 4 of any existing. 5 Q. Do you have any data or analysis of the 6 market share of the use of Lumify following LASIK 7 surgery? 8 A. I don't believe so, and I'm not aware of 9 the existence of any data on that. 10 Q. Do you have any data or analysis of the 11 number of units of Lumify that were sold for the 12 purposes of being administered following LASIK 13 surgery? 14 A. I don't believe so, and I'm not aware of 15 any data that would help answer that question. 16 Q. Do you have any data or analysis that 17 you conducted on the volume of Lumify sold 18 following LASIK surgery? 19 A. I don't believe so, and I'm not aware of 20 any data that would help resolve that issue. 21 Q. We can go back to Exhibit 1001 in that 22 same section. Claim 6 reads, "A method according
30 1 data to answer that question. 2 Q. Do you know what the available market 3 for eye drops are to patients that -- following 4 LASIK surgery? 5 MR. HASFORD: Object to the form of the 6 question. 7 THE WITNESS: What do you mean by the 8 term "available market"? 9 BY MR. FREDERICKSON: 10 Q. Do you know what options patients have 11 for eye drops following LASIK surgery? 12 A. I don't. I'm not a clinician. As an 13 economist and one who has investigated this, I 14 would think some of the eye redness products that 15 I discuss in my report might be considered 16 options, but I certainly don't know that from the 17 perspective of a clinician or a scientist. 18 Q. And you didn't undertake that analysis 19 for purposes of forming your opinions in this 20 case? 21 A. That's correct. 22 Q. Do you have any data or analysis on the	32 1 to Claim 3 wherein said ocular condition is 2 chronic red eye." 3 Do you see that? 4 A. Yes, I do. 5 Q. Do you have any data or conducted any 6 analysis of how many patients suffering from 7 chronic red eye take Lumify? 8 A. I don't believe so. 9 Q. Okay. Do you have any data or have you 10 conducted any analysis on the revenue associated 11 with Lumify used in the treatment of chronic red 12 eye? 13 A. I don't think so. 14 Q. Do you know what other eye drop products 15 are approved or used in the treatment of chronic 16 red eye? 17 A. Actually, I do not. I would expect that 18 some of the products that I've identified in my 19 declaration might be candidates for that, but I 20 don't know whether they meet your requirements. 21 Q. And you haven't done any analysis in 22 this matter to determine which of those products

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33 1 are actually used for the treatment of chronic red 2 eye; is that right? 3 A. I don't believe so. I'm not aware of 4 data existing that would help answer that 5 question. 6 Q. Are you aware of any data or have you 7 conducted any analysis on the number of Lumify 8 units sold for the treatment of chronic red eye? 9 A. No, I don't believe so. 10 Q. And do you have any data or have you 11 conducted any analysis of the volume of Lumify 12 sold for the treatment of chronic red eye? 13 A. No, I don't believe so. 14 Q. Turn to paragraph 105 in your 15 declaration, Exhibit 2024. 16 A. Did you say 5? 17 Q. 105, sorry. 18 A. I'm there. Thank you. 19 Q. The second sentence of paragraph 105 20 starts, "I further understand that the attributes 21 of Lumify that differentiate it from other eye 22 redness relievers include..."	35 1 tolerability, safety, efficacy, and the lack of 2 tachyphylaxis; is that correct? 3 A. Yes, it's the combination of those 4 things, I think. 5 Q. Do you have any analysis or evidence 6 that one of the differentiators of Lumify from 7 other eye redness relievers is the pH of Lumify? 8 A. You'd have to ask Dr. Noecker on that. 9 I believe that pH may go to the issue of 10 tolerability or safety or efficacy or lack of 11 tachyphylaxis. 12 Q. What about for purposes of forming your 13 opinions in this case, did you consider the pH 14 specifically of Lumify to be a differentiator from 15 the other eye redness relievers? 16 MR. HASFORD: Object to the form of the 17 question. 18 THE WITNESS: I wonder if you could ask 19 that a little bit differently. I'm not quite sure 20 I'm following it. 21 BY MR. FREDERICKSON: 22 Q. In forming the opinions -- you've
34 1 Do you see that sentence? 2 A. Yes, I do. 3 Q. And there's a cite at the end of that 4 sentence to Exhibit 2020. 5 Do you see that? 6 A. Yes. 7 Q. And I can flip it up on the screen or if 8 you want to check your list of materials 9 considered, but can you just confirm for me that 10 you understand Exhibit 2020 to be the declaration 11 of Robert Noecker? 12 A. Yes, I'm looking at my Appendix 2, and 13 that appears to be the case, yes. 14 Q. And so is it fair to say that your 15 understanding of the attributes of Lumify that 16 differentiate it from other eye redness relievers 17 is -- that comes from Dr. Noecker? 18 A. Yes, from a technical or scientific or 19 clinician perspective. 20 Q. And then you listed the attributes that 21 Dr. Noecker has identified differentiate Lumify 22 from other eye redness relievers to include	36 1 identified certain differentiators of Lumify as 2 compared to other eye redness relievers; correct? 3 A. Yes, according to the opinion of 4 Dr. Noecker. 5 Q. And Dr. Noecker provided you that 6 information; is that right? 7 A. He provided it not just to me, but to 8 others who are reading his declaration, yes. 9 Q. And was pH one of the differentiators 10 that you took into consideration when comparing 11 the attributes of Lumify versus the attributes of 12 other eye redness relievers in the market? 13 A. We'd have to look at the Noecker 14 declaration to see the extent to which he 15 discussed the issue of whether pH is a 16 differentiator or even whether -- well, let me 17 just stop it at that. 18 Q. What about you, though, when you were 19 looking at the market, did you consider pH to be a 20 differentiator? 21 MR. HASFORD: Object to the form of the 22 question.

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37 1 THE WITNESS: Again, I'm not a clinician 2 or a scientist. I was aware that there are issues 3 about pH levels. I don't recall seeing in the 4 consumer literature, meaning the marketing that 5 went to physicians and patients, that there was 6 explicit mention of pH levels, but I wouldn't 7 expect there to be. 8 BY MR. FREDERICKSON: 9 Q. Do you know what the pH of Lumify is? 10 A. I may have seen reference to that. I'm 11 sorry, I've not committed it to memory. 12 Q. Do you know what the pH of Advanced Eye 13 Relief is? 14 A. Sitting here right now, I don't. I may 15 have known it. 16 Q. Did you investigate the pH of Advanced 17 Eye Relief when forming your opinions in this 18 matter? 19 A. I don't recall undertaking a specific 20 investigation of that topic. 21 Q. Do you know what the pH of Clear Eyes 22 is?	39 1 assessment of what the pH of Visine is in forming 2 your opinions in this matter? 3 A. I don't recall doing that specific 4 analysis, no. 5 Q. The products that I identified, Advanced 6 Eye Relief, Clear Eyes, Rohto, and Visine, do you 7 know if any of those are administered to patients 8 following LASIK surgery? 9 A. Sitting here right now, I do not. 10 Q. And did you do an analysis to determine 11 whether and to what extent Advanced Eye Relief, 12 Clear Eyes, Rohto and Visine are prescribed or 13 used in patients following LASIK eye surgery? 14 A. I don't recall doing that analysis. 15 Q. Do you know whether Advanced Eye Relief, 16 Clear Eyes, Rohto or Visine are used in the 17 treatment of chronic red eye? 18 A. I do not. 19 Q. Did you do an analysis to determine 20 whether and to what extent Advanced Eye Relief, 21 Clear Eyes, Rohto, and Visine are used in the 22 treatment of chronic red eye?
38 1 A. Sitting here right now, I do not. I may 2 have known it. 3 Q. Did you seek to understand what the pH 4 of Clear Eyes is when forming your opinions in 5 this matter? 6 A. I don't recall undertaking a specific 7 investigation of that. I may have seen 8 information on that and may have considered that, 9 but I don't recall doing a separate analysis of 10 that. 11 Q. Do you know what the pH of Rohto is? 12 A. Sitting here right now, I do not. I may 13 have seen reference to it. 14 Q. Do you know if you did an analysis to 15 determine what the pH of Rohto was as part of 16 forming your opinions in this matter? 17 A. I don't recall doing a specific analysis 18 of that topic. 19 Q. Do you know what the pH of Visine is? 20 A. Sitting here right now, I do not. I may 21 have known at one point. 22 Q. Okay. Did you do an analysis or	40 1 A. I don't recall doing that specific 2 analysis. 3 Q. If you can turn to paragraph 35 of your 4 declaration, Exhibit 2024. The first sentence of 5 paragraph 35 reads, "I understand that brimonidine 6 tartrate was first approved in 1996 for lowering 7 intraocular pressure in patients with open-angle 8 glaucoma or ocular hypertension." 9 Do you see that? 10 A. Yes. 11 Q. And so when forming your opinions in 12 this matter, you understood that brimonidine 13 tartrate was used in ocular conditions as early as 14 1996; correct? 15 MR. HASFORD: Object to the extent it 16 mischaracterizes. 17 THE WITNESS: It was approved for 18 treating certain ocular conditions in certain 19 patients. 20 BY MR. FREDERICKSON: 21 Q. Do you know whether and to what extent 22 brimonidine tartrate was used following that

41 1 approval to treat ocular conditions such as 2 glaucoma and ocular hypertension? 3 A. I don't think so other than knowing how 4 Lumify has been used since 2017. 5 Q. Did you undertake any investigation of 6 the safety and tolerability of the use of 7 brimonidine tartrate following its approval in 8 1996 for open-angle glaucoma or ocular 9 hypertension treatment? 10 A. No, that appears to be something that's 11 outside my area of expertise. 12 Q. You understand that this proceeding, 13 it's an inter partes review that's pending before 14 the Patent Trial and Appeal Board? 15 A. Yes. 16 Q. And you understand that the issue -- one 17 of the issues that's before the Patent Trial and 18 Appeal Board is the obviousness of the challenge 19 claims of the '742 patent in view of certain prior 20 art references identified by the petitioner, 21 Slayback. 22 Is that your understanding?	43 1 in 2013; is that correct? 2 A. Yes. 3 Q. In this paragraph you cite to 4 Exhibit 2023, which you can confirm in your 5 Appendix 2 is the declaration of John Ferris; is 6 that right? 7 A. Yes. 8 Q. Other than the declaration of John 9 Ferris, did you have any other information, 10 whether through conversations or documents, about 11 Bausch+Lomb's license with Eye Therapies? 12 A. It's possible, but I'm not remembering 13 anything specific. If I did speak with 14 Mr. Ferris, it's very possible that we spoke about 15 the Eye Therapies' license, but I cannot say that 16 with great certainty. 17 Q. Do you have any specific memory sitting 18 here today of a conversation with Mr. Ferris about 19 the license between Bausch+Lomb and Eye Therapies? 20 A. No, I cannot. 21 Q. Other than Mr. Ferris, is there anyone 22 else who you may have spoken to surrounding the
42 1 A. I understand that there are issues about 2 obviousness. 3 Q. In forming your opinions in this matter, 4 did you review any of the prior art references 5 that were identified by the petitioner? 6 A. I don't recall doing that. Moreover, 7 it's outside my area of expertise. 8 Q. Was it relevant in forming your opinions 9 to have an understanding of how low concentrations 10 of brimonidine have been described in the prior 11 art? 12 MR. HASFORD: Object to the form of the 13 question. 14 THE WITNESS: I'm not an expert at prior 15 art evaluations. I am curious about what has and 16 is happening in the marketplace. 17 BY MR. FREDERICKSON: 18 Q. Go to paragraph 59 of your declaration, 19 please. 20 A. All right. I'm at 59. 21 Q. Paragraph 59, you refer to Bausch+Lomb's 22 decision to license in Lumify from Eye Therapies	44 1 circumstances that Bausch+Lomb entered into that 2 license agreement with Eye Therapies? 3 A. It's possible I had discussions with 4 counsel about that, but I don't have a clear 5 memory of that. 6 Q. Did counsel provide you any factual 7 information about the facts and circumstances 8 surrounding Bausch+Lomb's decision to enter into a 9 license agreement with Eye Therapies? 10 MR. HASFORD: I caution you don't 11 disclose any specific communications you may have 12 had with counsel. 13 THE WITNESS: There's nothing 14 specifically that I recall sitting here now that 15 meets your requirements. 16 BY MR. FREDERICKSON: 17 Q. Have you seen the actual license 18 agreement between Bausch+Lomb and Eye Therapies? 19 A. I don't believe I have. 20 Q. Did you ask to see it? 21 A. I just don't remember. 22 Q. Would you have wanted to see it? You're

45 1 offering -- let me put it this way: You're 2 offering some opinions about an agreement between 3 Bausch+Lomb and Eye Therapies. Would you have 4 wanted to see that agreement? 5 MR. HASFORD: Objection; argumentative. 6 THE WITNESS: I certainly didn't view it 7 as necessary to see. I'm generally interested in 8 information like this, but I had representations 9 from Mr. Ferris that were sufficient for my 10 purposes. 11 BY MR. FREDERICKSON: 12 Q. One of the representations from 13 Mr. Ferris that was sufficient was that 14 Bausch+Lomb has paid Eye Therapies nearly 15 \$42 million to date under that agreement; is that 16 right? 17 A. Yes. 18 Q. And do you know what form those payments 19 took? 20 A. I'm sorry, could you ask that -- I just 21 lost a few words that you said. 22 Q. Do you know what forms those payments	47 1 here in hard copy than up on the screen. 2 MR. FREDERICKSON: Yeah, that's fine 3 with me. And I assume it goes without saying, but 4 I'll say it anyway, no markups or anything on the 5 documents or anything, I presume? 6 MR. HASFORD: Not to my knowledge. 7 MR. FREDERICKSON: Good. 8 BY MR. FREDERICKSON: 9 Q. Okay. Mr. Jarosz, so you have a copy of 10 Exhibit 2023 in front of you? 11 A. Yes, I do. 12 Q. And that's the declaration of John 13 Ferris; correct? 14 A. Yes. 15 Q. And paragraph 21, which you cited, 16 identifies that Bausch has partnered with patent 17 owner, Eye Therapies, and has paid substantial 18 milestones and royalties, nearly 42 million U.S. 19 dollars at the time of this writing to patent 20 owner. 21 Do you see that? 22 A. Yes. You didn't read it perfectly, but
46 1 took? 2 A. Do you mean was it a check or a wire 3 transfer? Is that what you're asking? 4 Q. Were they upfront, milestone, or royalty 5 payments? 6 A. We'd have to look at the Ferris 7 declaration. My best memory is that it's a 8 combination of upfront or milestone payments and a 9 running royalty, but I don't say that with great 10 certainty. We can look at his declaration. 11 Q. Sure. 12 MR. FREDERICKSON: If we can pull up 13 Exhibit 2023. 14 (Jarosz Deposition Exhibit 2023 was 15 marked for identification and attached to the 16 transcript.) 17 MR. FREDERICKSON: If you could go to 18 paragraph 21. 19 THE REMOTE TECHNICIAN: Stand by. 20 MR. HASFORD: And for the record, I 21 handed Mr. Jarosz a hard copy of this for his ease 22 of review. It's a little easier for him to see it	48 1 I see what sentence you're referring to. 2 Q. But at least according to Mr. Ferris, 3 the form of the payments that Bausch has made to 4 Eye Therapies are in the form of milestones and 5 royalties; correct? 6 A. Yes. And I assume by royalties, he 7 meant running royalties. 8 Q. Do you know if Bausch agreed to make an 9 upfront payment to Eye Therapies when it entered 10 into the agreement in 2013? 11 A. I don't recall. I wouldn't be surprised 12 because most licenses that are structured like 13 this have upfront and milestones, but I cannot say 14 that with certainty with regard to this particular 15 license. 16 Q. Right. So you have no information one 17 way or the other if Bausch agreed to pay an 18 upfront fee when upon entering into that agreement 19 with Eye Therapies; right? 20 MR. HASFORD: Object to the extent it 21 mischaracterizes. 22 THE WITNESS: I don't know if

49 1 Mr. Ferris -- well, I don't know for sure. I'm 2 also not certain of its significance. 3 BY MR. FREDERICKSON: 4 Q. And you haven't seen the actual license 5 agreement itself; right? 6 A. I believe that's correct, yes. 7 Q. Do you know how much of the 42 million 8 are royalty payments versus milestones? 9 A. Sitting here right now, I do not. 10 Q. Do you know what the events were, if 11 any, that triggered the milestone payments? 12 A. I may have heard what those events are, 13 but I have not committed them to memory. 14 Q. Can you tell me what you understand 15 those events to be that triggered the milestone 16 payments? 17 MR. HASFORD: Object to the extent it 18 mischaracterizes the witness' testimony. 19 THE WITNESS: Again, I don't have any 20 memory of what those events are. 21 BY MR. FREDERICKSON: 22 Q. Do you know what the royalty rate is of	51 1 Q. Do you know specifically what line 2 extensions for Lumify are in development? 3 A. No, but they could be identified on 4 slide 24 of Exhibit 2068. 5 Q. And I'll give you a chance take a look 6 at that. Let me ask a foundational question. 7 What is a line extension? 8 A. Application of a therapy to treat other 9 conditions beyond those for which approval has 10 been given. That's true in a pharmaceutical 11 context. In a non-pharmaceutical context, it is 12 enhancing a product so it can be used in more 13 settings than originally anticipated. 14 Q. When you referred to line extensions in 15 paragraph 61, were you referring to line 16 extensions in a pharmaceutical setting or a 17 non-pharmaceutical setting? 18 A. Pharmaceutical. 19 MR. FREDERICKSON: Let's go to -- if we 20 can pull up Exhibit 2068 and we can look at slide 21 24. 22 (Jarosz Deposition Exhibit 2068 was
50 1 the agreement between Bausch and Eye Therapies? 2 A. Sitting here right now, I do not. I may 3 have heard that, but I don't remember it. 4 Q. The royalty payments in that agreement 5 between Bausch and Eye Therapies, do you know if 6 they were a percentage based on net sales or a per 7 unit royalty? 8 A. I don't know for sure. My expectation 9 and perhaps my vague memory is that they were 10 revenues that -- based on revenues, that's 11 typically the case, but I can't say that with 12 certainty here. 13 Q. Turn to paragraph 61 of your 14 declaration, please. 15 A. All right. I'm there. 16 Q. The last sentence you write, "Line 17 extensions for Lumify are also in development, 18 with Bausch+Lomb stating in early 2022 that 19 Phase 3 clinical trials were scheduled to begin in 20 the second half of 2022." 21 Do you see that? 22 A. Yes.	52 1 marked for identification and attached to the 2 transcript.) 3 MR. FREDERICKSON: Or maybe one more. I 4 think they might have cited the -- yeah, the page. 5 BY MR. FREDERICKSON: 6 Q. So can you see Exhibit 2068 on your 7 screen, Mr. Jarosz? 8 A. Yes, I can. 9 Q. And is this the slide that you were 10 referring to in paragraph 61 of your declaration? 11 A. I think so, although the precise slide 12 number is not shown on the screen. There's a 13 designation in the bottom right on the screen I'm 14 looking at that this meeting is being recorded, 15 and that might cut off what the slide number is. 16 Q. Sure. 17 MR. FREDERICKSON: Can we scroll down a 18 little bit just so we can make sure we're looking 19 at the right thing. 20 BY MR. FREDERICKSON: 21 Q. Can you see the 24 at the bottom there? 22 A. No, I can't.

53 1 MR. FREDERICKSON: Keep scrolling down, 2 and maybe it will get higher. 3 THE WITNESS: There. I see it now. 4 BY MR. FREDERICKSON: 5 Q. And so you cited in your reference to 6 line extensions in paragraph 61 of your 7 declaration, Exhibit 2068 at slide 24; is that 8 right? 9 A. Yes. 10 Q. And you recognize this page that has a 11 table that says "Vision care" on the top to be the 12 page and slide you're referring to? 13 A. Yes. 14 Q. Page 24 of Exhibit 2068 does not 15 identify what specific line extension studies are 16 being conducted by Bausch; is that right? 17 A. That appears to be the case, yes. 18 Q. So do you know what specific line 19 extension studies Bausch is conducting? 20 A. I do not. 21 Q. Okay. Do you know if Bausch is looking 22 to study Lumify -- let me rephrase that.	55 1 record at 10 a.m. 2 (Recess from the record.) 3 THE VIDEOGRAPHER: We are going back on 4 the record at 10:11 a.m. 5 BY MR. FREDERICKSON: 6 Q. Okay. Welcome back, Mr. Jarosz. 7 Can you turn to paragraph 69 of your 8 declaration? 9 A. All right. I'm there. 10 Q. Okay. Paragraph 69 of your declaration 11 you identify two sets of IRI data for the, quote, 12 redness reliever category that Bausch+Lomb uses in 13 the normal course of business; is that right? 14 A. Yes. 15 Q. One set of data is referred to as the 16 IRI point-of-sale or POS data; correct? 17 A. Yes. 18 Q. And another set of data is the IRI panel 19 data; is that correct? 20 A. Yes. 21 Q. Prior to your work in this matter, had 22 you previous -- do you have previous experience
54 1 Do you know if Bausch is pursuing a line 2 extension for Lumify for patients following LASIK 3 surgery? 4 A. I do not. 5 Q. Do you know if Bausch is pursuing a line 6 extension for the use of Lumify to treat chronic 7 red eye? 8 A. I do not. 9 Q. Do you know if any of the line 10 extensions that Bausch has identified in this 11 slide relate to uses that are covered by the 12 challenged claims of the '742 patent? 13 A. I do not. 14 Q. Let's take a look at paragraph 69 of 15 your declaration, please. 16 MR. HASFORD: Actually, you know what, 17 it looks like we've been going for an hour. If 18 this is a good time to take a break, why don't we 19 do that here. 20 MR. FREDERICKSON: Yeah, that's fine 21 with me. 22 THE VIDEOGRAPHER: We are going off the	56 1 with either the IRI point-of-sale or IRI panel 2 data? 3 A. Probably I've been involved in lots of 4 matters for lots of years. It's very likely, but 5 I can't point you to particular instances right 6 now. 7 Q. Do you have any specific recollection of 8 the prior matters within the last five or so years 9 where you've used or relied on IRI point-of-sale 10 or IRI panel data? 11 A. Nothing comes to mind within the last 12 five years, but I've been involved in many 13 matters, even in the last five years. So it's 14 very possible there have been some. 15 Q. Did you ask for the IRI point-of-sale or 16 IRI panel data when you were performing your work 17 in this case? 18 A. I don't think I specifically asked for 19 those data. I recall asking for information on 20 units and dollars and market shares. And I think 21 it was offered up that the IRI data would be the 22 most useful in that dimension, but I don't recall

57 1 specifically asking for IRI data. 2 Q. What other information, if any, did you 3 ask for other than units, dollars, and market 4 share? 5 A. Maybe volumes, as well. And I should 6 revise a previous answer. I don't think I 7 explicitly asked for market share data. I asked, 8 I think, for information that would allow me to 9 calculate shares of the redness reliever business. 10 Q. Other than in units, dollars, volumes 11 and information that would allow you to calculate 12 share for the redness reliever business, did you 13 ask for any other market or economic-related 14 information? 15 A. Nothing else comes to mind this very 16 moment. 17 Q. When you asked for information that 18 would allow you to calculate market share, did you 19 identify who you believe the relevant market 20 participants to be? 21 A. I don't think so. I think I understood 22 that Bausch+Lomb has a sense of who its	59 1 have a vague memory of having had a conversation 2 with somebody else at Bausch+Lomb, who is the 3 keeper of the IRI data. But I can't say that with 4 certainty, nor can I identify the name of that 5 person. 6 BY MR. FREDERICKSON: 7 Q. Can you tell me anything that you 8 remember from that conversation with the person 9 who you identified as potentially the keeper of 10 the IRI data? 11 A. I think what I learned from that 12 conversation is what's summarized in my report. 13 And I think we may have made a request for data 14 consistent with that conversation, including data 15 from 2018 forward. 16 Q. Did you receive that data? 17 A. I believe so, through the discovery 18 process. 19 Q. What do you mean "through the discovery 20 process"? 21 A. Well, we received it, I think, from 22 counsel, and we identified that in the various
58 1 competitors were in the redness relief business 2 and had IRI data associated with that. So I did 3 not do a separate market definition analysis. 4 Q. So for purposes of the opinions you 5 formed in this case, you relied on the market that 6 Bausch+Lomb uses for its internal purposes? 7 A. I don't know if they use the term 8 "market," but I relied on information as to what 9 it viewed its primary or perhaps its entire 10 competition to be in the redness relief business. 11 Q. In paragraph 69 of your declaration, you 12 include a number of citations to Exhibit 2023, 13 which is the declaration of John Ferris; correct? 14 A. Yes. 15 Q. Okay. Other than the declaration of 16 John Ferris, what, if anything, did you do to gain 17 a further understanding of the IRI point-of-sale 18 and IRI panel data? 19 MR. HASFORD: Object to the form of the 20 question. 21 THE WITNESS: As I mentioned earlier, I 22 may have had a conversation with Mr. Ferris and I	60 1 appendices that we have that summarize the data. 2 I think at its core, the data are from 3 Exhibit 2058. Let me just confirm that. And 4 2057. So those are the data that we received, I 5 don't think, directly from Bausch+Lomb, but from 6 counsel. That's -- when I said "discovery." I 7 don't know if that's quite the right term in this 8 setting, but counsel facilitated us getting 2057 9 and 2058. 10 Q. The conversation -- 2057 -- Exhibits 11 2057 and 2058, did you have access to those before 12 or after your conversations with John Ferris or 13 the keeper of the IRI data? 14 A. I think after. I think we talked 15 generally about what data were available and then 16 were provided those data. 17 Q. Other than your conversations with 18 Mr. Ferris, the keeper of the IRI data, and your 19 review of Mr. Ferris' declaration, what, if 20 anything, did you do to determine how IRI collects 21 and compiles the POS and panel data? 22 A. I have a general understanding of what

61 1 IRI is and what it does. I understand it from 2 having been involved in other matters in the past 3 that I think involved IRI data and just generally 4 reading about the data service. Those are the 5 things that come to mind right now. It's possible 6 we visited their website and sought to understand 7 how they collect their data. I don't remember 8 that specifically. 9 Q. Do you know, did you or did you not go 10 to the IRI website to see how they collected their 11 data? 12 A. I don't think that I did. It's possible 13 that someone on my team did, but I don't have a 14 very sharp recollection of that. 15 Q. And sitting here today, can you identify 16 for me any other matters that you've worked on 17 that involve IRI data? 18 MR. HASFORD: I'll just caution you to 19 not disclose anything where you're under an 20 obligation of confidentiality. 21 THE WITNESS: I remember, without going 22 into any details, looking at IRI data with regard	63 1 sales, that is purchases made online and shipped 2 to the customer. 3 Q. That would be, like, for example, 4 Amazon? 5 A. I think that's probably a good example. 6 Q. I also saw some place that Costco might 7 have been excluded from the IRI point-of-sale 8 data. Is that consistent with your understanding? 9 A. That is consistent with my memory, yes. 10 Q. Do you know why Costco is excluded from 11 the IRI point-of-sale data? 12 A. I don't. I may have known, but I don't 13 recall it now. 14 Q. Do you know what percentage of Lumify's 15 sales go through channels that are not included in 16 the IRI point-of-sales data? 17 A. I do not. But if you see the -- if you 18 compare sales as reported in the panel data versus 19 the point-of-sale data, there are some 20 differences, but not substantial. I think it's 10 21 or 20 percent, but I'm just going on my memory 22 right now.
62 1 to a Scientific Atlanta matter that I had. There 2 are likely others, but I'd have to go and look at 3 my files. 4 BY MR. FREDERICKSON: 5 Q. When was that Scientific Atlanta matter? 6 A. Scientific Atlanta matter was more than 7 five years ago, maybe more than ten years ago. 8 There are probably other matters, however, which 9 I've looked at IRI data. 10 Q. Was that Scientific Atlanta matter 11 before or after it was acquired by Cisco? 12 A. I think before, but I can't say that 13 with certainty. 14 Q. So in your declaration, you principally 15 rely on the IRI POS data; is that correct? 16 A. As opposed to the panel data, yes, I did 17 look at the panel data. But for most of the 18 appendices, they rely on the point-of-sale data. 19 Q. Now, the IRI point-of-sales data, that 20 excludes information from sales that are made 21 through online channels; is that right? 22 A. It does not include online exclusive	64 1 Q. The panel data, that's based on 2 projections from a National Consumer Panel; is 3 that correct? 4 A. That's one basis, yes. 5 Q. Okay. And what does that mean, the 6 National Consumer Panel? 7 A. A group of users across the country that 8 are available for being queried. 9 Q. Do you know how that National Consumer 10 Panel was put together? 11 A. I don't recall knowing that, no. 12 Q. Do you know how many individuals are on 13 the National Consumer Panel? 14 A. No, and I'm not sure that there's just a 15 fixed set on -- in one panel, but one could, I 16 guess, find out by either asking IRI or perhaps 17 looking at their website. 18 Q. And this National Consumer Panel, the 19 IRI folks will put questions to those panelists 20 about their purchasing behaviors. Is that how it 21 works? 22 A. Generally, yes.

65 1 Q. And then from the request from -- from 2 the answers to those questions, IRI is able to 3 extrapolate those -- that data out to make 4 projections of what the overall marketplace looks 5 like; correct? 6 A. I think that's roughly their intention, 7 yes. 8 Q. Okay. Just going back to the online 9 exclusive sales, do you know how Lumify offers 10 coupons and discounts to its customers through 11 those channels? 12 A. I'm not fully sure what your question 13 is. 14 Q. Yeah, let me fix it. 15 Do you know if Bausch's approach to 16 offering coupons and discounts to consumers of 17 Lumify varies depending on whether they're a 18 brick-and-mortar purchase or an online exclusive 19 sale? 20 MR. HASFORD: Objection to form. 21 THE WITNESS: I don't. 22	67 1 the IRI POS data that would not be reflected in 2 those revenue numbers that IRI compiles? 3 MR. HASFORD: Object to the form. 4 THE WITNESS: I don't. I would just be 5 speculating as to what the answer might be. 6 BY MR. FREDERICKSON: 7 Q. Did you try to find that out? 8 A. Not that I recall, no. 9 Q. In conducting your analysis for this 10 matter, did you ask Bausch+Lomb for their internal 11 profit and loss statements for Lumify? 12 A. I don't think so. I may have asked 13 whether there are internal profit and loss 14 statements and I likely learned that there are 15 not, but I could be wrong. 16 Q. Do you know if Bausch+Lomb maintains a 17 profit and loss statement for Lumify? 18 A. I don't know for sure, but I think the 19 answer is that it does not. 20 Q. And what's your basis for thinking that 21 the answer is that Bausch+Lomb does not contain a 22 profit and loss statement?
66 1 BY MR. FREDERICKSON: 2 Q. Paragraph 72 of your declaration, 3 Footnote 6, you write, "I understand that the 4 revenues and prices in the IRI POS data generally 5 reflect what consumers pay at the register (i.e., 6 net of any promotions, discounts, and/or coupons 7 applied at the register)." 8 Do you see that? 9 A. Yes. 10 Q. And, again, you're citing the 11 declaration of John Ferris in support of that; 12 correct? 13 A. Yes, I believe so. 14 Q. Okay. What do you mean when you say 15 "generally reflect what consumers pay at the 16 register"? 17 A. I might be using his terminology. There 18 may be exceptions to that. There may be rebates 19 that can be applied other than just at the 20 register, but I don't know that for sure. You had 21 best ask him that question. 22 Q. Do you know what the exceptions are to	68 1 A. A vague memory of the answer to my 2 inquiry. 3 Q. A vague memory of what? 4 A. Me asking counsel whether there are 5 Lumify profit and loss statements and -- 6 MR. HASFORD: I'll just caution you not 7 to disclose any specific communications with 8 counsel. 9 THE WITNESS: A vague memory of having 10 heard that those don't exist. That is not at all 11 uncommon for any therapy. 12 BY MR. FREDERICKSON: 13 Q. When you say "counsel," do you mean 14 outside counsel like Finnegan? 15 A. Or inside counsel at Bausch+Lomb. 16 Q. Is that Kristi McIntyre? 17 A. That's the one that comes to mind. 18 That's the person that comes to mind right now. 19 Q. Do you -- go ahead, sir. 20 A. I don't recall if I had that 21 conversation. I might have. Again, I have a 22 vague memory of that.

69 1 Q. Okay. I'll just ask the question and 2 make sure I have my record. 3 Do you have a specific memory of a 4 conversation with Kristi McIntyre in which you 5 asked whether Bausch+Lomb maintains profit and 6 loss statements for Lumify? 7 MR. HASFORD: Same caution. 8 THE WITNESS: I don't have a very clear 9 memory of that, no. 10 BY MR. FREDERICKSON: 11 Q. Do you have a specific recollection of a 12 conversation that you had with outside counsel at 13 Finnegan where you inquired whether Bausch+Lomb 14 maintains a profit and loss statement for Lumify? 15 MR. HASFORD: Same caution. 16 THE WITNESS: The same answer. I don't 17 have a specific recollection of that. 18 BY MR. FREDERICKSON: 19 Q. What about Bausch's vision care segment 20 of its business, do you know if Bausch maintains a 21 profit and loss statement for the vision care 22 segment?	71 1 addressed that topic, excuse me, in his 2 declaration. I don't recall, though, there being 3 a specific number. I'm not sure if one is easily 4 obtainable or not. 5 BY MR. FREDERICKSON: 6 Q. What about did you have -- do you have a 7 specific recollection of any conversations with 8 outside counsel at Finnegan in which you sought 9 internal financial information from Bausch 10 concerning how much it spent marketing and 11 promoting Lumify since 2018? 12 MR. HASFORD: Same caution. 13 THE WITNESS: I think we had 14 conversations about the topic and the result of 15 the conversations is what you see in the Ferris 16 declaration and what I've cited in my declaration. 17 BY MR. FREDERICKSON: 18 Q. Did you seek any information internally 19 from Bausch about how much it spent in research 20 and development expenditures relating to Lumify? 21 A. I think I had conversations about that 22 topic. I have a memory of having a conversation
70 1 A. I do not know. 2 Q. Did you ask for Bausch's profit and loss 3 statement for the vision care segment in forming 4 your opinions in this matter? 5 A. Not that I recall. 6 Q. Did you seek any internal documents from 7 Bausch+Lomb concerning the amount of money it 8 spent to market and promote Lumify since 2018? 9 A. I'm not sure if this answers, but I had 10 discussions with counsel about that information. 11 And to the extent I have information, it's 12 summarized in my declaration. 13 Q. Which counsel did you have discussions 14 with? 15 A. Inside and/or outside counsel. 16 Q. Do you have a specific memory of a 17 conversation that you had with Kristi McIntyre 18 about whether and how much Bausch has spent 19 marketing and promoting Lumify since 2018? 20 MR. HASFORD: Same caution. 21 THE WITNESS: I don't have a specific 22 memory of that. It's possible that Mr. Ferris	72 1 about that. 2 Q. Okay. And what do you mean? 3 A. I remember -- 4 MR. HASFORD: Same caution. 5 THE WITNESS: -- asking whether such 6 data are -- exist and I recall hearing that the 7 data are not broken at that level. So it's 8 virtually impossible to produce that number. 9 BY MR. FREDERICKSON: 10 Q. Okay. So, as far as you understand, it 11 was virtually impossible for Bausch+Lomb to give a 12 specific number of the amount of money it spent on 13 research and development for Lumify? 14 MR. HASFORD: I'll just object to the 15 extent it mischaracterizes the testimony. 16 THE WITNESS: I -- my memory is that it 17 was represented that it would be very difficult, 18 perhaps impossible, to determine the precise R&D 19 dollars for Lumify. But, again, my memory is not 20 perfect. 21 BY MR. FREDERICKSON: 22 Q. If you'd look at paragraph 73 of your

73 1 declaration. 2 A. I'm there. 3 Q. And towards the end of paragraph 73, you 4 report revenue figures for the second half of 5 2018, 2019, 2020, and the first half of 2021 and 6 the first half of 2022; correct, for Lumify? 7 A. Yes. 8 Q. Okay. Those revenue figures, those come 9 from the IRI point-of-sale data; is that right? 10 A. Yes, I believe so. 11 Q. That IRI point-of-sales data, that's a 12 third party making projections about what Lumify's 13 revenues are correct? 14 A. Yes, but you see the confirmation that I 15 have in Footnote 8. 16 Q. So you called it a confirmation, but 17 according to the IRI point-of-sale data, Lumify's 18 revenue was 120.3 million in 2021; correct? 19 A. Yes. 20 Q. And according to Bausch+Lomb's S-1 21 financial filing, it's -- Lumify's revenue was 22 reported for 2021 as being \$108 million; correct?	75 1 Q. Did you undertake any analysis to 2 determine why there was a discrepancy between the 3 Bausch+Lomb reported numbers and the IRI reported 4 revenue numbers for Lumify? 5 MR. HASFORD: Object to the extent it 6 mischaracterizes. 7 THE WITNESS: I did not investigate why 8 there was a difference between the point-of-sales 9 numbers and the S-1 reported numbers for 2021. 10 BY MR. FREDERICKSON: 11 Q. According to the IRI point-of-sales 12 numbers for 2019, Lumify had annual revenues of 13 78.4 million; is that correct? 14 A. Yes. 15 MR. FREDERICKSON: If we take a look, 16 it's Exhibit 2045. We can put that on the screen. 17 (Jarosz Deposition Exhibit 2045 was 18 marked for identification and attached to the 19 transcript.) 20 BY MR. FREDERICKSON: 21 Q. Mr. Jarosz, can you see Exhibit 2045? 22 A. I see an exhibit. I can't confirm that
74 1 A. Yes. 2 Q. Okay. And the Lumify point-of-sales 3 data, that does not include sales through online 4 exclusive and Costco; correct? 5 A. That's correct. 6 Q. Okay. So there's a discrepancy between 7 what Bausch reports in its public filings with the 8 SEC and what you extrapolated from the IRI 9 point-of-sale data; correct? 10 MR. HASFORD: Objection to the extent it 11 mischaracterizes. 12 THE WITNESS: I didn't extrapolate 13 anything from the point-of-sale data. I reported 14 the point-of-sales data, and those numbers are 15 higher than what Bausch+Lomb reported in the S-1 16 filing, but not significantly higher. 17 BY MR. FREDERICKSON: 18 Q. So just to ask the question again, the 19 IRI point-of-sales revenue numbers are different 20 from the Bausch+Lomb S-1 financials for 2021; 21 correct? 22 A. Yes.	76 1 it's 2045. 2 MR. FREDERICKSON: Can we scroll down so 3 Mr. Jarosz can see the footer at the bottom of it. 4 BY MR. FREDERICKSON: 5 Q. Can you see that? 6 A. I'm sorry, the same box is sitting over 7 that. So I don't know if this is the document. 8 No, the box is still covering it. So -- 9 MR. FREDERICKSON: Let's make it really 10 big. Yeah. 11 THE WITNESS: Yes, I see now, 2045. 12 BY MR. FREDERICKSON: 13 Q. Okay. Exhibit 2045 is one of the 14 documents that you cited in your declaration; is 15 that correct? 16 A. Yes. 17 Q. And it's a document entitled -- let me 18 do it again. 19 Exhibit 2045 is a document entitled "IRI 20 Innovation Before the New Normal" dated May 2020; 21 is that right? 22 A. Largely right. I identified it as "New

77 1 Product Pacesetters: Innovation Before the New 2 Normal." 3 Q. Fair enough. 4 IRI here is the same IRI that was the 5 source of the point-of-sale and panel data that is 6 cited in your declaration? 7 A. I think that's right, yes. 8 Q. And do you know what IRI New Product 9 Pacesetters, what that refers to? 10 A. I'm just going off memory, but I think 11 it talks about some of the products that relate to 12 this data that did particularly well in the 13 marketplace. 14 Q. Prior to your work in this case, were 15 you familiar with IRI's New Product Pacesetters 16 reports? 17 A. Maybe, but I don't have a clear 18 recollection of that. 19 Q. And do you understand that this 20 Exhibit 2045 relates to the financial information 21 for various products for the calendar year of 22 2019?	79 1 Q. Okay. But my question is going to be -- 2 A. At least certain period and certain 3 channels and certain products, I would like to 4 understand what is covered by that \$48.2 million 5 number. 6 Q. You cited this particular page in this 7 particular document in your declaration; correct? 8 A. I think so. I don't recall citing the 9 48.2 number, but I think I cited Lumify as being 10 No. 9 on this list, but I'm just going off my 11 memory. 12 Q. Do you know how this list was created? 13 A. I don't remember, but it may say at the 14 top or in another page in this report. 15 Q. When forming your opinions in citing 16 this particular list, did you seek to understand 17 what the different dollar numbers were that were 18 attributed to the various products that were 19 identified? 20 A. Not that I recall. 21 Q. Did you seek to identify or determine 22 why there would be discrepancies between the
78 1 A. That sounds right. 2 Q. So can we turn to page 18 of 3 Exhibit 2045. And you can see towards the 4 bottom -- we'll try to scroll it up so it's not 5 blocked. 6 You see Lumify on page 18 of 7 Exhibit 2045? It's No. 9? 8 A. Yes. 9 Q. And IRI in, it's Exhibit 2045, identify 10 the revenue for Lumify being \$48.2 million. 11 Do you see that? 12 A. Yes. I don't know what period this 13 covers, though. I probably need to look at the 14 whole page or more of the report. But, yes, I do 15 see that number. 16 Q. Okay. I'd like you to assume -- and 17 I'll show it to you in a second, but let's assume 18 that the 48.2 million is for the calendar year 19 2019. 20 Is that okay? 21 A. I don't know, because I don't know what 22 your question is going to be.	80 1 48.2 million reported in this list and the revenue 2 numbers that you determined from the IRI data from 3 2019 of 78.4 million? 4 MR. HASFORD: Object to the extent it 5 mischaracterizes. 6 THE WITNESS: I don't know if there's a 7 discrepancy. Maybe you have something to show me 8 that 48.2 covers the year 2019. 9 BY MR. FREDERICKSON: 10 Q. You don't know one way or the other 11 whether 48.2 covers the year 2019; is that right? 12 A. Or the whole year, that's correct, I do 13 not. Not sitting here right now, I don't. 14 Q. Take a look at -- 15 MR. FREDERICKSON: We can take that 16 down. Thank you. 17 BY MR. FREDERICKSON: 18 Q. We can look at paragraph 113 of your 19 declaration. 20 A. Okay. I'm there. 21 Q. Paragraph 113, you write, "According to 22 Mr. Ferris, the commercial strategy for Lumify

81 1 since its launch consistently has centered on 2 Lumify's unique ability to reduce eye redness, and 3 all Lumify marketing, promotional, and sales 4 materials are consistent with the FDA-approved 5 indication for producing eye redness." 6 Do you see that? 7 A. I do, yes. 8 Q. Again, you're relying on Mr. Ferris' 9 declaration for that information; is that right? 10 A. Yes, and what I've seen is consistent 11 with this. But as kind of the primary cite, it's 12 the declaration. 13 Q. Did you endeavor to look at all Lumify 14 marketing, promotional, and sales materials when 15 forming your opinions in this case? 16 A. I endeavored to look at the ones that 17 were easily obtainable by me, and I looked at 18 those. I did not make a specific investigation of 19 every single marketing, promotional, and sales set 20 of materials. 21 Q. What did you do to identify the Lumify 22 marketing materials that you were going to look	83 1 A. Yes. 2 Q. And when you say you've seen those, have 3 you seen those because you are a person who 4 watches TV and those commercials happen to be on, 5 or did you see those for purposes of your opinions 6 in the case? 7 A. The former. 8 Q. To your knowledge, does any of the 9 marketing, promotional, and sales material for 10 Lumify refer to the pH of Lumify? 11 A. I don't recall seeing specific mention 12 of the pH level. Again, I did not look at every 13 single promotional material. 14 Q. To your knowledge, are you aware of any 15 marketing, promotional, and sales material that 16 refer to the use of Lumify following LASIK 17 surgery? 18 A. I don't recall one way or the other on 19 that. 20 Q. To your knowledge, are you aware of any 21 Lumify marketing, promotional and sales materials 22 regarding the use of Lumify to treat chronic red
82 1 at? 2 A. I think some of those were provided to 3 me by counsel. And I think we may have separately 4 done some Internet searches, including visiting 5 the Bausch+Lomb site and the Lumify segment of the 6 site. 7 Q. Other than conducting Internet searches 8 and having promotional material provided to you by 9 counsel, what else, if anything, did you do to 10 determine whether all Lumify marketing, 11 promotional, and sales materials are consistent 12 with the FDA-approved indication for reducing eye 13 redness? 14 MR. HASFORD: Objection to the form of 15 the question to the extent it mischaracterizes. 16 THE WITNESS: Nothing else comes to mind 17 this moment. 18 I guess I should -- there is one other 19 thing that comes to mind. There are DTC ads on 20 TV, to the best of my memory, and I've seen those. 21 BY MR. FREDERICKSON: 22 Q. DTC stands for direct to consumer?	84 1 eye? 2 A. Same answer. I don't recall one way or 3 the other. 4 Q. Do you know the total amount of money 5 that Bausch+Lomb has spent since 2018 marketing, 6 selling, and promoting Lumify? 7 MR. HASFORD: Object to form. 8 THE WITNESS: I don't think I do. If I 9 do, it's from the Ferris declaration. 10 BY MR. FREDERICKSON: 11 Q. Did you try to figure out or ask Bausch 12 how much it spent marketing, promoting, and 13 selling Lumify since 2018? 14 MR. HASFORD: Same objection. 15 THE WITNESS: I don't recall if I put 16 that request in. 17 BY MR. FREDERICKSON: 18 Q. Do you know if that information is 19 available within Bausch, its actual expenditures 20 in marketing, promoting, and selling Lumify since 21 2018? 22 A. I don't know.

85 1 Q. Do you know how much money has been 2 spent by the manufacturers of Advanced Eye Relief 3 in the marketing, promotion, and selling of 4 Advanced Eye Relief? 5 A. I don't think I do, no. 6 Q. Do you know how much money has been 7 spent by the manufacturer of Clear Eyes in the 8 marketing, promotion, and selling of Clear Eyes? 9 A. I don't think I do. 10 Q. Do you know how much money has been 11 spent by the manufacturer of Rohto in the 12 marketing, promotion, and selling of Rohto? 13 A. I don't think I do. 14 Q. Do you know how much money has been 15 spent by the manufacturer of Visine in the 16 marketing, promotion, and selling of Visine? 17 A. I don't think I do. 18 Q. Do you know if IRI contains data sources 19 that contain and have information about how much 20 various suppliers of eye redness relieving agents 21 spent in marketing in periods of time? 22 A. I don't think it collects those data,	87 1 BY MR. FREDERICKSON: 2 Q. And any information about the amount of 3 money that Bausch+Lomb spent in the marketing, 4 promoting, and selling of Lumify from the Ferris 5 declaration -- I'll try that one again. 6 Any money that Bausch+Lomb spent in the 7 marketing, promotion, and selling of Lumify that 8 you learned of from the Ferris deposition, that 9 was after you submitted your declaration in this 10 case; correct? 11 A. That's correct. 12 Q. Go to paragraph 129 of your declaration, 13 please. 14 A. I'm there. 15 Q. The last sentence, it's on page 61, 16 reads, "Research on pharmaceutical promotion has 17 found that pharmaceutical promotion is primarily 18 informative with respect to choices among 19 differentiated drugs, but it is persuasive with 20 respect to undifferentiated drugs." 21 Do you see that? 22 A. Yes, I do.
86 1 but I could be wrong on that. 2 I'd like to amend an earlier answer. To 3 the extent that I know how much Bausch+Lomb has 4 spent, it may have been in part discussed in the 5 Ferris declaration. There was a little bit of 6 discussion on that topic. 7 Q. But the universe of the -- when you say 8 "declaration," you mean deposition, maybe? 9 A. I meant deposition. I'm sorry, I 10 misspoke. 11 Q. Okay. So the universe of the 12 information that you would have available to you 13 about how much Bausch+Lomb has spent marketing, 14 promoting, and selling Lumify comes from either 15 the Ferris declaration or the Ferris deposition; 16 is that right? 17 MR. HASFORD: Objection to the extent it 18 mischaracterizes. 19 THE WITNESS: I don't know. Those are 20 two likely sources. I may have seen the 21 information otherwise, but I just don't recall it 22 sitting right now.	88 1 Q. You cite to Exhibit 2043; is that 2 correct? 3 A. Yes. 4 MR. FREDERICKSON: Let's go ahead and 5 pull up Exhibit 2043. 6 (Jarosz Deposition Exhibit 2043 was 7 marked for identification and attached to the 8 transcript.) 9 MR. FREDERICKSON: And if we can scroll 10 to the first sort of cover page, which is going to 11 be the second page. 12 BY MR. FREDERICKSON: 13 Q. This is a journal article in Management 14 Science entitled "Measuring the Informative and 15 Persuasive Roles of Detailing on Prescribing 16 Decisions." 17 Do you see that? 18 A. Yes. 19 Q. And feel free to take a look at your 20 Appendix 2, but can you confirm that this 21 Management Science article is, in fact, 22 Exhibit 2043 that you cited?

89 1 A. I think it is. 2 MR. FREDERICKSON: And if we can scroll 3 into the first paragraph, which is an abstract 4 looking paragraph, there's a sentence that says, 5 "Using the data," maybe two-thirds of the way 6 down. 7 BY MR. FREDERICKSON: 8 Q. Can you see that? 9 A. Yes. 10 Q. And so Exhibit 2043 is a journal article 11 that's based on data for angiotensin-converting 12 enzyme inhibitors with diuretics in their use in 13 Canada; correct? 14 A. Yes. 15 Q. And the focus of this particular article 16 Exhibit 2043, that is measuring the informative 17 and persuasive roles of detailing on prescribing 18 decisions; is that correct? 19 A. That's what's discussed in the abstract 20 here. The article itself might have more 21 information. 22 Q. If we scroll up to the top, the title of	91 1 persuasive advertising and promotion for beauty 2 products? 3 A. I don't recall doing specific research 4 on that specific topic, but I have researched a 5 lot about -- over the years about informative and 6 persuasive advertising, but I don't recall doing 7 it specific to beauty products. 8 Q. Would you agree that Lumify is a beauty 9 product? 10 MR. HASFORD: Object to the form. 11 THE WITNESS: I haven't characterized it 12 that way, perhaps others have. A term I might 13 feel more comfortable with is "cosmetic," but 14 maybe that's not even right. 15 BY MR. FREDERICKSON: 16 Q. Would you agree that Lumify is a 17 cosmetic product? 18 MR. HASFORD: Same objection. 19 THE WITNESS: That seems to make sense 20 to me. Whether people who are more experienced in 21 this business would agree with me, I don't know. 22 MR. FREDERICKSON: We can take that
90 1 the article refers to the roles of detailing; 2 correct? 3 A. Yes. 4 Q. And are you aware of any other 5 information in here, promotional or marketing, 6 other than detailing that's being discussed by the 7 authors? 8 A. I'd have to look at the whole article, 9 but I expect that it's primarily oriented to 10 detailing. 11 Q. Do you know if the authors looked at the 12 persuasive versus informative roles of 13 direct-to-consumer advertising? 14 A. I don't recall without looking at the 15 article in detail. 16 Q. And, again, the focus of Exhibit 2043 17 and the data that it's based on is the use of 18 angiotensin-converting enzyme inhibitors with 19 diuretics; correct? 20 A. Yes. 21 Q. Did you do any research into the 22 literature regarding the role of informative and	92 1 down. Thank you. 2 BY MR. FREDERICKSON: 3 Q. Turn to paragraph 100 of your 4 declaration. 5 A. Did you say 100? 6 Q. 100, yeah. 7 A. Okay. I'm there. 8 Q. Okay. In paragraph 100, you write, 9 "Third parties have recognized Lumify's 10 marketplace success, with companies such as 11 Nielsen and IRI highlighting Lumify's exceptional 12 performance." 13 Do you see that? 14 A. Yes. 15 Q. One of the documents you cite there is 16 Exhibit 2125; is that correct? 17 A. Yes. 18 MR. FREDERICKSON: Let's take a look at 19 Exhibit 2125. 20 (Jarosz Deposition Exhibit 2125 was 21 marked for identification and attached to the 22 transcript.)

93 1 THE REMOTE TECHNICIAN: Stand by, my 2 apologies. 3 MR. FREDERICKSON: You put on -- I think 4 it's 2125, sorry. 5 THE REMOTE TECHNICIAN: My apologies, 6 stand by. 7 BY MR. FREDERICKSON: 8 Q. Okay. We put on the screen, Mr. Jarosz, 9 a press release entitled "Nielsen's BASES Names 10 Lumify Eye Drops to 2020 U.S. BASES Top 25 11 Breakthrough Innovations List." 12 Do you see that? 13 A. Yes. 14 Q. Do you recognize this press release to 15 be Exhibit 2125 cited in your declaration? 16 A. Yes. 17 MR. FREDERICKSON: If we can go to the 18 second page of Exhibit 2125. There's a paragraph 19 toward the bottom, we can move that up, that says, 20 "Since Bausch+Lomb first launched Lumify." 21 Can you see that? 22 A. Yes.	95 1 it. 2 Q. Are you -- do you have actual knowledge 3 of what Bausch+Lomb actually did with respect to 4 this ongoing surround-sound integrated consumer 5 campaign? 6 A. I don't think so. But just to be clear, 7 I think this is Nielsen's representation of what 8 the consumer campaign is. I don't think it's 9 Bausch+Lomb's representation, but I could be 10 wrong. 11 Q. Right. So do you have an understanding 12 of what Nielsen would be referring to when it 13 refers to Bausch's ongoing surround-sound 14 integrated consumer campaign? 15 A. Not specifically. I gave you my best 16 guess as to what they have in mind, but I don't 17 know if I'm right. 18 MR. FREDERICKSON: Can we go to the next 19 page, which is page 3 of 5 at the top. 20 And maybe we can even -- you'll probably 21 need some context. So we can scroll to the bottom 22 of page 205.
94 1 Q. "Since Bausch+Lomb first launched Lumify 2 in 2018, these one-of-a-kind OTC eye drops that 3 contain low-dose brimonidine have become ingrained 4 in popular culture through an ongoing 5 surround-sound integrated consumer campaign 6 highlighting their ability to significantly reduce 7 redness to help eyes appear whiter, brighter and 8 more radiant for up to eight hours when used as 9 directed." 10 Do you see that? 11 A. Yes. 12 Q. Okay. Do you have an understanding of 13 what the ongoing surround-sound integrated 14 consumer campaign refers to? 15 A. I don't. I could speculate, but I don't 16 know for sure what they have in mind. 17 Q. Okay. What is your understanding of 18 what the ongoing surround-sound integrated 19 consumer campaign refers to? 20 A. My best guess is what they're saying is 21 that there's a continuous campaign highlighting 22 Lumify, and the campaign has several tentacles to	96 1 THE WITNESS: You are reminding me that 2 this is a Bausch+Lomb press release. So maybe I 3 was incorrect in saying this is Nielsen's 4 representation. It very well could be 5 Bausch+Lomb's representation, I apologize. 6 BY MR. FREDERICKSON: 7 Q. That's okay. 8 And so for the record again, do you have 9 an understanding of what Bausch+Lomb was referring 10 to in its press release about an ongoing 11 surround-sound integrated consumer campaign? 12 MR. HASFORD: Object to the extent it 13 mischaracterizes. 14 THE WITNESS: I don't know. 15 BY MR. FREDERICKSON: 16 Q. So at the bottom, there's a quote from a 17 Ben Macedo, BASES leader, North America. 18 Do you see that? 19 A. Yes. 20 Q. And you understand that Mr. Macedo, 21 BASES leader, North America, that's a Nielsen 22 employee?

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97 1 A. I would think at the time he gave this 2 quote he was a Nielsen employee, yes. 3 Q. And at the bottom on the top of page 3, 4 the end of this paragraph, he states, "Bausch+Lomb 5 successfully married a novel formulation with a 6 fresh national marketing campaign that caught fire 7 in the popular culture and on social media, 8 spurring Lumify to capture the hearts of 9 consumers." 10 Do you see that? 11 A. Yes. 12 Q. Do you have any understanding of what 13 Mr. Macedo was referring to when he said that the 14 Bausch+Lomb national marketing campaign caught 15 fire in the popular culture? 16 A. Not other than what I read right here. 17 Q. Okay. Do you have an understanding of 18 what Mr. Macedo was referring to with respect to 19 what Bausch+Lomb's marketing campaign -- what 20 happened with it on social media? 21 A. Not other than what I see here, no. 22 Q. Do you know what Bausch+Lomb's marketing	99 1 another whether any members of your team working 2 on this matter investigated Bausch+Lomb's 3 marketing content on any social media platform; 4 right? 5 A. That's correct. 6 MR. FREDERICKSON: We can take that 7 down. Thank you. 8 BY MR. FREDERICKSON: 9 Q. Let's take a look at paragraph 126 of 10 your declaration. 11 A. Okay. I'm there. 12 Q. The last sentence, which starts at the 13 bottom of page 59 and spills over into page 60, 14 reads, "Several beauty websites featured Lumify on 15 end-of-year awards lists based on its unique 16 formulation and lack of rebound redness, stating 17 that Lumify, quote, doesn't use the harmful 18 redness-correcting science of every other 19 over-the-counter eye drop - which means your eyes 20 aren't twice as red when they wear off, and, 21 quote, unlike other redness relief drops, [Lumify] 22 doesn't leave you with more redness later."
98 1 strategy for Lumify on social media was? 2 A. I don't know exactly what your question 3 is, but I think it did advertising through social 4 media outlets. 5 Q. And social media outlets include 6 platforms like Facebook, Twitter, TikTok, things 7 like that? 8 A. That's a general definition of social 9 media platforms. Whether the campaign was on all 10 of those, I don't know. 11 Q. Okay. Do you know what social media 12 platforms Bausch+Lomb marketed Lumify on? 13 A. Sitting here right now, I do not. I may 14 have known, but I don't remember. 15 Q. As part of your review of Bausch+Lomb's 16 marketing material, the websites, and the 17 information provided to you by counsel, did you 18 undertake any effort to identify Bausch+Lomb's 19 marketing presence on social media platforms? 20 A. I did not. It's possible that people on 21 my team did, but I'm not aware of that. 22 Q. And you have no knowledge one way or	100 1 Do you see that? 2 A. Yes. 3 Q. And then you cite three exhibits, 4 Exhibits 2101, Exhibit 2114, Exhibit 2144; is that 5 correct? 6 A. Yes, that's right. 7 Q. Okay. And those are websites that 8 support that sentence; correct? 9 A. Probably, but let me know double-check. 10 Yes, that appears to be the case. And I 11 also see that I have used the term "beauty." 12 Q. Okay. Those websites, how did you find 13 those? 14 A. People on my team probably did some 15 searching around for mentions of Lumify and were 16 directed to those sites, but I could be wrong. 17 Q. Do you know one way or the other if 18 those sites were identified based on searches from 19 your team or direction provided by others? 20 A. My best guess is that it was searches by 21 our team, but I'm not ruling out the possibility 22 that someone directed our attention to those

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101 1 three. 2 Q. I prefer you not to guess. So if you 3 don't know, you can just say, I don't know. But 4 do you know whether those three websites were 5 identified by searches from your team, or were you 6 or your team directed to them? 7 MR. HASFORD: Objection; asked and 8 answered. 9 THE WITNESS: I don't know for sure. My 10 best guess is that our team independently found 11 those, but I don't know for sure. 12 BY MR. FREDERICKSON: 13 Q. Okay. And what criteria did your team 14 use on whether it was going to include or exclude 15 websites found off of Internet searching in your 16 expert declaration? 17 A. I don't know, but my best guess is we 18 searched on the term "Lumify." 19 Q. And if there was a website that 20 mentioned Lumify, it was going to be included in 21 your declaration? 22 MR. HASFORD: Objection to the extent it	103 1 A. I've heard that, yes. 2 Q. And not everything that a website 3 publishes or every list that a website creates is 4 a reliable list; correct? 5 A. Probably -- correct. 6 Q. Okay. And so what, if anything, did 7 your team do to determine whether the lists that 8 are cited in paragraph 126 of your report are 9 reliable? 10 A. I'm sorry, the lists that are cited? 11 Q. Yeah, the sentence reads, "Several 12 beauty websites featured Lumify on end-of-year 13 awards lists." 14 Do you see that? 15 A. Thank you. You refreshed my memory. 16 I don't know. I don't know that we 17 separately sought to determine the reliability of 18 those lists, but we mentioned several lists, and 19 they seem to be consistent in reporting that 20 Lumify was successful and different from other 21 things that were available. 22 Q. How many beauty websites with
102 1 mischaracterizes the witness' testimony. 2 THE WITNESS: Not necessarily. I think 3 probably people on my team looked at websites that 4 talk about Lumify and brought to my attention the 5 things that seemed most useful in our 6 investigation. 7 BY MR. FREDERICKSON: 8 Q. Was there a standard -- a reliability 9 standard that your team used as to whether it was 10 going to include a particular website in your 11 expert declaration? 12 MR. HASFORD: Objection to the form of 13 the question. 14 THE WITNESS: I don't know what you mean 15 by reliability standard. 16 BY MR. FREDERICKSON: 17 Q. Well, there's a lot of -- you can agree 18 there's a lot of information on the Internet; 19 correct? 20 A. Yes. 21 Q. Some of that information is less 22 reliable than other information; correct?	104 1 end-of-year awards lists did you or your team look 2 at in forming your opinions? 3 A. I don't know. 4 Q. Did you or your team come across any 5 beauty websites that contained end-of-year awards 6 lists that did not include Lumify? 7 A. I don't know. The fact that we probably 8 searched on the term "Lumify" makes me think that 9 it's unlikely, but it's possible. 10 MR. FREDERICKSON: Why don't we take 11 another break. I may be nearing the end of the 12 deposition. 13 MR. HASFORD: All right. Sounds good. 14 THE VIDEOGRAPHER: We are going off the 15 record at 11:07 a.m. 16 (Recess from the record.) 17 THE VIDEOGRAPHER: We are back on the 18 record at 11:18 a.m. 19 MR. FREDERICKSON: Mr. Jarosz, thank you 20 very much for your time. I have no further 21 questions. 22 THE WITNESS: Thank you very much.

105 1 MR. HASFORD: I have a short amount of 2 redirect here. 3 EXAMINATION BY COUNSEL FOR THE PATENT OWNER 4 BY MR. HASFORD: 5 Q. Let's pull up the Ferris declaration, 6 which we looked at earlier. It's Exhibit 2023. 7 John, if you'd like to look at your hard 8 copy. If y'all want to pull it up on the screen, 9 that's fine, as well. 10 Do you recall Mr. Frederickson asking 11 you questions earlier today about the Ferris 12 declaration, Exhibit 2023? 13 A. Yes. 14 Q. Turn, if you would, to paragraph 7, 15 page 3. 16 A. I'm there. 17 Q. Are you familiar with IQVIA, spelled 18 I-Q-V-I-A? 19 A. Yes. 20 Q. What is IQVIA? 21 A. They're an aggregator of data that 22 virtually every pharmaceutical firm relies upon.	107 1 THE WITNESS: Based on the data that I 2 looked at, less than 10 percent. 3 BY MR. HASFORD: 4 Q. Based on IQVIA data since the launch of 5 Lumify, approximately what percent of eye care 6 professionals are recommending redness relievers 7 to their patients? 8 MR. FREDERICKSON: Objection. 9 THE WITNESS: Approximately 50 percent. 10 It's sometimes a little bit lower, sometimes a 11 little bit higher, and it's changed slightly over 12 time, but roughly 50 percent. 13 BY MR. HASFORD: 14 Q. Approximately what percent of those 15 recommendations are for Lumify? 16 MR. FREDERICKSON: Objection. 17 THE WITNESS: Approximately 85 percent. 18 BY MR. HASFORD: 19 Q. You may put that document aside. 20 Are you aware that Lupin has filed an 21 ANDA seeking to market generic copies of Lumify? 22 A. Yes.
106 1 And they, in many dimensions, are thought of as 2 the gold standard for data on shipments and 3 prescriptions and volumes and revenues and prices 4 for a variety of therapies. 5 Q. In your opinion, are IQVIA data 6 reputable? 7 A. Absolutely. 8 MR. FREDERICKSON: Objection; beyond the 9 scope. 10 Sorry, I'll need to lodge objections 11 too. Beyond the scope. 12 BY MR. HASFORD: 13 Q. Have you reviewed IQVIA data from 14 surveys of eye care professionals? 15 A. Yes, I have. 16 MR. FREDERICKSON: Objection. 17 BY MR. HASFORD: 18 Q. Based on IQVIA data, prior to Lumify, 19 approximately what percent of eye care 20 professionals recommended any redness relievers to 21 their patients? 22 MR. FREDERICKSON: Objection.	108 1 MR. FREDERICKSON: Objection. 2 BY MR. HASFORD: 3 Q. How, if at all, does Lupin's filing of 4 an ANDA for a generic copy of Lumify relate to 5 your opinions on commercial success? 6 MR. FREDERICKSON: Objection; scope. 7 THE WITNESS: It's confirmatory of the 8 conclusions that I drew on reveal preferences; 9 that is, it's confirmation that another major 10 pharmaceutical company wants into this business. 11 Companies like Lupin and Slayback want into this 12 business typically because it's likely to be a 13 profitable and successful business. 14 MR. HASFORD: Nothing further from us at 15 this point. 16 MR. FREDERICKSON: I have no further 17 questions. 18 Thank you again, Mr. Jarosz. 19 THE WITNESS: Thank you very much. 20 THE VIDEOGRAPHER: This marks the end of 21 the deposition of John C. Jarosz. 22 We're going off the record at 11:21 a.m.

109 1 A C K N O W L E D G E M E N T 2 3 STATE OF MARYLAND) 4 ss 5 COUNTY OF MONTGOMERY) 6 I, JOHN JAROSZ, hereby 7 certify, I have read the transcript of my 8 testimony taken under oath in my deposition of 9 November 11, 2022; that the transcript is a true, 10 complete and correct record of what was asked, 11 answered and said during this deposition, and that 12 the answers on the record as given by me are true 13 and correct. 14 15 _____ 16 JOHN JAROSZ 17 18 Sworn and subscribed to before me 19 this ____ day of _____, 2022. 20 21 _____ 22 Notary Public	111 1 the outcome of this matter. 2 3 IN WITNESS WHEREOF, I have hereunto set my hand 4 this 19th day of November, 2022. 5 6 7  8 _____ 9 NOTARY PUBLIC IN AND FOR THE MARYLAND 10 11 12 13 14 15 16 17 18 19 20 21 22
110 1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC 2 I, Matthew Goldstein, Certified Reporter 3 and Notary Public within and for the State of 4 Maryland do hereby certify: 5 That JOHN JAROSZ, the witness whose 6 deposition is hereinbefore set forth, was duly 7 sworn by me before the commencement of such 8 deposition and that such deposition was take 9 before me and is a true record of the testimony 10 given by such witness. 11 I further certify that the adverse 12 party, EYE THERAPIES, LLC, was represented by 13 counsel at the deposition. 14 I further certify that the deposition of 15 JOHN JAROSZ, occurred remotely, on Friday, 16 November, 11, 2022, commencing at 9:06 a.m. to 17 11:21 a.m. 18 I further certify that I am not related 19 to any of the parties to this action by blood or 20 marriage, I am not employed by or an attorney to 21 any of the parties to this action, and that I am 22 in no way interested, financially or otherwise, in	

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