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CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER

Transcript of Julie L. Davis

Date: February 26, 2025

Case: Bruker Spatial Biology -v- President and Fellows of Harvard College (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

10x Genomics EX2083
Bruker v. Harvard
IPR2024-00526

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 BRUKER SPATIAL BIOLOGY, INC.,

6 Petitioner,

7 v.

8 PRESIDENT AND FELLOWS OF HARVARD COLLEGE AND 10X

9 GENOMICS,

10 Patent Owner.

11
12 Case IPR2024-00526

13 U.S. Patent No. 11,542,554

14
15 CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER

16 Videotaped Deposition of JULIE DAVIS

17 Conducted virtually via Zoom

18 Wednesday, February 26, 2025-11:08 a.m. CST

19 Job No.: 572389

20 Pages: 1 - 129

21 Reported by: THERESA A. VORKAPIC,

22 CSR, RMR, CRR, RPR

1 Videotaped deposition of Julie L. Davis,
2 conducted virtually via Zoom, pursuant to notice
3 before Theresa A. Vorkapic, a Certified Shorthand
4 Reporter, Registered Merit Reporter, Certified
5 Realtime Reporter, Registered Professional
6 Reporter and a Notary Public in and for the State
7 of Illinois.

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1 A P P E A R A N C E S

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E X H I B I T S

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I N D E X (Continued)

Exhibit 2040 Accelerating the Mastery of 70
Biology to Advance Human
Health 42Nd Annual J.P.
Morgan Healthcare Conference

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

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

4 (The witness was duly sworn.)

5 JULIE L. DAVIS,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. CHEUNG:

10 Q Ms. Davis, thank you for being here today.
11 Please state your name and address for the
12 record.

13 A Good morning. My name is Julie Davis. I
14 live in Santa Barbara at 1008 Coyote Road.

15 Q Did you prepare for today's deposition?

16 A I did.

17 Q What did you do to prepare for today?

18 A I reviewed my declaration and the
19 supporting exhibits, and I also met with counsel
20 from Sterne Kessler.

21 Q Who did you meet with from Sterne Kessler
22 Goldstein & Fox?

1 A Each of the three individuals who are
2 represented on today's Zoom call as well as one of
3 their colleagues.

4 Q When did you meet with counsel?

5 A That was yesterday.

6 Q How long did you meet with counsel?

7 A I think that was about three hours.

8 Q Did you review any documents when you met
9 with counsel?

10 A I had in front of me a copy of my
11 declaration, and we were talking about the content
12 of my declaration.

13 Q Did you review any documents that
14 refreshed your recollection?

15 A I don't recall any that refreshed my
16 recollection since I had already reviewed the
17 underlying documents supporting my declaration.

18 Q I understand you've had your deposition
19 taken before, right?

20 A I have.

21 Q So I'm going to assume that you have a
22 general understanding of deposition procedure; is

1 that fair?

2 A That is fair.

3 Q So during the course of the day, let me
4 know if you don't understand a question, otherwise
5 I'm going to assume you understand my question.

6 Is that okay?

7 A It's fair to assume that I thought I
8 understood your question. I don't think we can
9 assume that I understood it the way you intended
10 in all cases.

11 Q Is there any reason that you're unable to
12 answer completely and truthfully today?

13 A No.

14 Q So you mentioned you submitted a
15 declaration in this matter; is that right?

16 A I did.

17 Q How long did you spend preparing your
18 declaration?

19 A I don't have a number of hours in mind
20 specifically, so I don't really know how to answer
21 that question.

22 Q Can you provide a ballpark figure?

1 A I think in total it would be somewhere
2 between 10 and 15 hours, but that does not count
3 the hours spent on the District Court case between
4 these parties and much of my declaration repeats
5 content that was part of that report that I
6 submitted in that case.

7 Q So for today let's focus on just the
8 declaration that you submitted for this case
9 because the District Court that's a separate case,
10 okay.

11 Did you meet with anyone at 10x to prepare
12 your declaration in this case?

13 A I did not.

14 Q Is the entirety of your opinion for this
15 case included in your declaration?

16 A Yes, as of this point in time.

17 Q Is there any part of your declaration you
18 would like to change or amend now?

19 A I did notice as I was reviewing my
20 declaration that there's a typographical error in
21 referencing the exhibit number for my CV on Page 2
22 of my declaration. I have referred to it on that

1 page as Exhibit 2016 and it was later submitted as
2 Exhibit 2027.

3 Q Okay. Did you notice anything else in
4 your declaration you would like to bring up now?

5 A I did not.

6 Q Is there any part of your opinion in this
7 matter that is not included in your declaration?

8 A Not as of this time.

9 Q In forming the opinions in your
10 declaration, did you apply reliable methods and
11 principles?

12 A Yes, I believe I did.

13 Q Did you leave out from your declaration
14 any part of your opinion?

15 A No, nothing comes to mind.

16 Q Did you meet with Dr. Shroff to prepare
17 your declaration?

18 A No, I had access to his signed declaration
19 before I submitted my own.

20 Q So you did not have any conversation with
21 Dr. Shroff in preparing your declaration; is that
22 right?

1 A That is correct.

2 Q So you reviewed Dr. Shroff's signed
3 declaration in preparing your declaration; is that
4 right?

5 A I did.

6 Q Did you receive a draft of Dr. Shroff's
7 declaration before he signed it?

8 A No, I did not.

9 Q Is the document you received and reviewed
10 Exhibit 2024 in this case feel free to pull up
11 Exhibit 2024 which should be the declaration of
12 Dr. Shroff?

13 A Yes, that's it.

14 Q Did you review any other declarations from
15 Dr. Shroff?

16 A No.

17 Q Do you remember when you received
18 Dr. Shroff's declaration?

19 A I recall it to have been earlier in the
20 same day that we both submitted our declarations.

21 Q So you received Dr. Shroff's signed
22 declaration earlier on December 10 and

1 subsequently on December 10 you signed your
2 declaration; is that right?

3 A That is my recollection.

4 Q Can you tell me your educational
5 background?

6 A That is spelled out it in my CV, but I can
7 tell you as an overview that I graduated from
8 Kansas State University in 1978 with a bachelor's
9 degree in business administration and accounting.

10 Q Do you have any other -- have you received
11 any other educational diplomas or certificates?

12 A Since my graduation, I have participated
13 in a number of continuing professional education
14 courses over the course of my career, but I do not
15 have any other degrees or certificates.

16 Q Do you have any educational background in
17 a science or technology field?

18 A Not other than those courses that I would
19 have taken as part of my college curriculum.

20 Q Do you recall the courses that you took as
21 part of your college curriculum that were science
22 and technology based?

1 A I don't recall specifics because that's
2 now been 45 years ago, maybe 50 years ago, but I
3 can tell you that they would have been general
4 biology and chemistry classes.

5 Q If you could turn to Paragraphs 9 to 10 of
6 your declaration.

7 A I'm going to use my hard copy if that's
8 okay with you, and I'm there right now.

9 Q Do you see that the heading for these
10 paragraphs are information relied upon?

11 A I see that.

12 Q And you state in Paragraph 9 that the
13 opinions that you stated here are based upon the
14 documents cited herein and also listed in
15 Appendix A.

16 Do you see that statement?

17 A I do.

18 Q So did you rely on the documents listed in
19 Appendix A in forming your opinions?

20 A I did rely on those documents.

21 Q Did you rely on any documents that are not
22 listed in Appendix A in forming your opinions?

1 A I did rely upon Appendix B and Appendix C
2 to my report which are cited within the
3 declaration itself. They are not separately
4 listed in Appendix A.

5 Q Are there any other documents that are not
6 listed in Appendix A or Appendix B or Appendix C?

7 A Nothing else comes to mind.

8 Q In forming your opinions, did you review
9 any documents in addition to those listed in
10 Appendix A or Appendix B or Appendix C?

11 A Not for purposes of this declaration.

12 Q Did you review Dr. Shroff's deposition
13 transcript in this matter?

14 A I did not.

15 Q Did you review any documents that you
16 would characterize as marketing or advertising
17 literature related to Xenium?

18 A The only documents that I reviewed in
19 connection with this proceeding are those that are
20 identified in Exhibit A.

21 Q I'm going to direct you to Paragraph 8 of
22 your declaration. Take a moment and review it on

1 your own and let me know when you're done.

2 A I have that.

3 Q What were you retained to provide an
4 opinion on in this matter?

5 A I was asked to address the issue of
6 commercial success of in particular the 10x Xenium
7 can products.

8 Q Did you provide an opinion on the
9 commercial success of the Xenium product?

10 A I did.

11 Q Did you see in Paragraph 8 you also state
12 that you were retained to opine on the commercial
13 success of NanoString s product?

14 A More specifically it says that I was
15 retained to provide analysis of NanoString s
16 products the commercial success of NanoString s
17 products, however, there is no data from
18 NanoString in this procedure or in this proceeding
19 and, therefore, I could not perform an analysis
20 specifically related to the commercial success of
21 NanoString's products.

22 Q So to clarify, your opinion in this matter

1 does not include an analysis of the commercial
2 success of NanoString's product; is that right?

3 A It's fair to say that I do not have any
4 data from NanoString to address the same
5 commercial success metrics that I have done for
6 10x. So unless that changes, I do not have a
7 similar opinion on the commercial success of
8 NanoString's products.

9 Q In your declaration, do you provide an
10 opinion on the commercial success of NanoString's
11 product?

12 A Not specifically since I have no data from
13 NanoString to assess any of the same metrics that
14 I have done for 10x. I do, of course, mention in
15 several places NanoString's products, but I don't
16 have the same information available to assess the
17 specifics of commercial success related to those
18 products.

19 Q What is your opinion on the commercial
20 success of NanoString's products?

21 A I explain that or I've explained that I do
22 not have access to any data related to the

1 commercial success of their products, so all I can
2 do is reference the fact that I understand from
3 Dr. Shroff that they do practice the '554 patent,
4 but I have no further information to assess
5 commercial success on those products.

6 Q So would it be fair to say that in your
7 declaration you do not provide an analysis of the
8 commercial success of NanoString's products?

9 A Yes, that would be fair to say. Unless or
10 until I receive data related to the sales and
11 profitability of those products, I would not be
12 able to perform a similar assessment of commercial
13 success.

14 Q Is the 10x product that practices the '554
15 patent Xenium?

16 DR. KHANDURI: Objection. Form.

17 BY MR. CHEUNG:

18 Q Sorry. Ms. Davis, did you answer?

19 A Yes. My understanding is that the Xenium
20 products embody the '554 patent.

21 Q Is the NanoString product that embodies
22 the '554 CosMx?

1 A Yes, that is my understanding.

2 Q What is the basis for your belief that
3 Xenium embodies the '554 patent?

4 A That is based upon the understanding I
5 have from the declaration of Dr. Shroff about his
6 opinion related to that subject.

7 Q So would it be fair to say that your
8 opinion that Xenium embodies the '554 patent is
9 entirely from Dr. Shroff's declaration?

10 A As it relates to this proceeding, that
11 would be correct.

12 Q Did you have an independent understanding
13 other than Dr. Shroff's declaration that Xenium
14 embodies the '554 patent?

15 A I have no such independent opinion.

16 Q At a high level, what is your opinion of
17 Xenium's commercial success as it relates to this
18 matter?

19 DR. KHANDURI: Objection. Form.

20 BY THE WITNESS:

21 A I explain that at some length in my
22 declaration, but at a very high level, I believe

1 there's evidence of commercial success based upon
2 my analysis of the Xenium product sales and
3 profitability.

4 BY MR. CHEUNG:

5 Q I would direct you to the second sentence
6 of Paragraph 8 in your declaration where you state
7 and I quote: "I understand that commercial
8 success is related to secondary considerations
9 also called objective indicia of nonobviousness in
10 connection with the patentability of the '554
11 patent".

12 Do you see that sentence?

13 A I do.

14 Q What is your understanding of how
15 commercial success is related to secondary
16 considerations of nonobviousness?

17 A My understanding is that commercial
18 success is one such consideration that can be
19 addressed as it relates to nonobviousness. My
20 general understanding of the law even though I'm
21 not a lawyer is that to the extent that a party
22 can prove commercial success of the products that

1 helps prove that the patented technology for the
2 patented claims were not obvious.

3 Q How did you arrive at your understanding
4 of how commercial success is related to
5 nonobviousness of a patent?

6 A That's based in part upon my understanding
7 from prior experience in similar matters as well
8 as my understanding from discussions with counsel
9 in this proceeding.

10 Q I'm going to direct you to Paragraph 31 of
11 your declaration. Let me know when you're there.

12 A I'm there.

13 Q Do you see near end of Paragraph 31 where
14 you state: "In particular, I have examined the
15 following factors as evidence of commercial
16 success", and there are two bullet points with one
17 being sales and sales growth and the other one
18 being profitability.

19 Do you see that?

20 A I do.

21 Q Is your opinion that Xenium is
22 commercially successful based on the factors sales

1 and sales growth and profitability?

2 A Primarily yes, but I do reference other
3 aspects reflecting commercial success that are not
4 measured specifically by the numbers reflecting
5 sales volumes or profitability.

6 Q Did you list out the factors sales and
7 sales profit and profitability because these are
8 the two primary factors for determining commercial
9 success?

10 A They are the two factors that I can assess
11 commercial success based upon the data that has
12 been provided to me in this proceeding. They are
13 not necessarily the only factors, but with what I
14 have to work with, those are the two that I could
15 address specifically.

16 Q In determining that Xenium is commercially
17 successful, are the two factors listed here, sales
18 and sales growth and profitability, more
19 determinative of your opinion than the other
20 factors discussed in your declaration?

21 DR. KHANDURI: Objection. Form.

22 BY THE WITNESS:

1 A I don't know for sure what you mean by
2 more determinative, but I think they are the two
3 that can be measured as opposed to other aspects
4 that I have to talk about in the context of the
5 material I've reviewed as opposed to data that I
6 can analyze.

7 Q When you say that these two factors have
8 data that you can analyze, do you mean that these
9 are the two factors that are quantitative as
10 opposed to other qualitative factors?

11 A They are quantitative in the sense that
12 they can be measured with some precision. There
13 are other aspects of commercial success that I
14 address in my report that have some quantitative
15 measures, but not to the extent that those two
16 factors specifically have.

17 Q Are the factors sales and sales growth and
18 profitability more important in determining
19 commercial success than other factors not listed
20 here?

21 DR. KHANDURI: Objection. Form.

22 BY THE WITNESS:

1 A No, not necessarily.

2 BY MR. CHEUNG:

3 Q If sales and sales growth and
4 profitability were the only factors in
5 consideration, would you still consider Xenium to
6 be commercially successful?

7 DR. KHANDURI: Objection. Form.

8 BY THE WITNESS:

9 A Yes, I would.

10 BY MR. CHEUNG:

11 Q If you did not consider the factors sales
12 and sales growth and profitability, would you
13 still consider Xenium to be commercially
14 successful?

15 DR. KHANDURI: Objection. Form.

16 BY THE WITNESS:

17 A I don't know how to answer that because I
18 was not presented with that situation. I had
19 information that I could analyze related to sales,
20 sales growth and profitability, and therefore, I
21 didn't need to figure out what to do without it.

22 BY MR. CHEUNG:

1 Q Are there factors other than sales and
2 sales growth and profitability that you
3 considered?

4 A As we have already discussed, I do talk
5 about other aspects of commercial success within
6 this section that are not specifically related to
7 the data itself that gave rise to the analysis of
8 sales, sales growth and profitability.

9 Q Ms. Davis, what do you understand sales
10 and sales growth to be?

11 DR. KHANDURI: Objection. Form.

12 BY THE WITNESS:

13 A In the context of this case, we're talking
14 about the revenues generated by sales of Xenium
15 products and the growth in those revenues over
16 time as well as the profitability of those
17 products that were sold.

18 BY MR. CHEUNG:

19 Q Why is the factor sales and sales growth
20 evidence of commercial success?

21 DR. KHANDURI: Objection. Form.

22 BY THE WITNESS:

1 A Most businesspeople would look at sales
2 and sales growth as an important aspect of
3 determining whether or not the product that they
4 had launched was commercially successful.

5 BY MR. CHEUNG:

6 Q Why is the factor of profitability
7 evidence of commercial success?

8 DR. KHANDURI: Objection. Form.

9 BY THE WITNESS:

10 A As an as that is another aspect that most
11 businesspeople would look at to determine whether
12 or not their products were commercially
13 successful. They want those products to be
14 profitable.

15 BY MR. CHEUNG:

16 Q Is any sales of a product evidence of its
17 commercial success?

18 DR. KHANDURI: Objection. Form.

19 BY THE WITNESS:

20 A I don't know exactly what you mean when
21 you say "any sales".

22 BY MR. CHEUNG:

1 Q If a product sold only one unit, is that
2 evidence of its commercial success?

3 A If you were talking about the kinds of
4 products that are sold in this case, I would
5 expect that most businesspeople would not think of
6 that as a commercially successful product if it
7 had been on the market for several years and sold
8 only one unit in your hypothetical.

9 Q What is the level of sales of a product
10 that you would consider to be evidence of
11 commercial success?

12 DR. KHANDURI: Objection. Form.

13 BY THE WITNESS:

14 A I don't think there is any absolute
15 threshold that can be applied in the context of
16 every case.

17 BY MR. CHEUNG:

18 Q In the context of this case in analyzing
19 the sales of Xenium, what is the threshold above
20 which you would consider evidence of Xenium's
21 commercial success?

22 DR. KHANDURI: Objection. Form.

1 BY THE WITNESS:

2 A I don't have in mind a particular
3 threshold. I did not need to establish such a
4 threshold since the sales of these products is
5 significant over time.

6 BY MR. CHEUNG:

7 Q Would your opinion change if the sales of
8 Xenium was lower than what you have described in
9 your declaration?

10 DR. KHANDURI: Objection. Form.

11 BY THE WITNESS:

12 A I don't know. I did not have to consider
13 anything other than the actual sales volumes
14 because that information was available to me.

15 BY MR. CHEUNG:

16 Q Is there a level of sales growth that
17 would not be evidence of commercial success?

18 DR. KHANDURI: Objection. Form.

19 BY THE WITNESS:

20 A There may be, but I don't think we have to
21 consider that in this case [REDACTED]

22 [REDACTED]

1 BY MR. CHEUNG:

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 BY MR. CHEUNG:

12 Q Does the product have to be profitable in
13 order for profitability to be evidence of
14 commercial success?

15 DR. KHANDURI: Objection. Form.

16 BY THE WITNESS:

17 A I think that depends upon the specifics of
18 any given situation. In this situation the
19 product is profitable, so I did not have to
20 consider the alternative.

21 BY MR. CHEUNG:

22 Q In order to find a product to be

1 commercially successful, does the product have to
2 have positive sales, positive sales growth, and
3 positive profitability?

4 DR. KHANDURI: Objection. Form.

5 BY THE WITNESS:

6 A Are you asking me that as a matter of law
7 or in what context are you asking that?

8 BY MR. CHEUNG:

9 Q As an expert as you perform your analysis
10 on a product to determine if it's commercially
11 successful, would that product have to have
12 positive sales, positive sales growth and positive
13 profitability in order for you to find that the
14 product is commercially successful?

15 DR. KHANDURI: Objection. Form,
16 relevance.

17 BY THE WITNESS:

18 A Whether or not that would be necessary is
19 not a question I have had to address because in
20 the context of this proceeding, each of those
21 three metrics are positive; however, as an
22 example, if you're asking about positive sales

1 versus otherwise, I don't think most
2 businesspeople would think a product was
3 successful if it had no sales. That's not the
4 context of this case, though.

5 BY MR. CHEUNG:

6 Q In this case after you analyzed the data
7 on Xenium to determine the sales, sales growth and
8 profitability of Xenium, how did you determine
9 that these factors support your conclusion that
10 Xenium is commercially successful?

11 DR. KHANDURI: Objection. Form.

12 BY THE WITNESS:

13 A I evaluated them as I would expect a
14 reasonable businessperson to do, and I think the
15 metrics that are demonstrated by those three
16 aspects of my analysis show that it is a
17 successful product.

18 BY MR. CHEUNG:

19 Q What is your basis for determining that
20 the metrics of Xenium as it relates to sales,
21 sales growth and profitability would be considered
22 by a reasonable businessperson to be commercially

1 successful?

2 A I base that upon my experience in the
3 business world over the last 45 years.

4 Q Did you perform any comparison on the
5 sales and sales growth and profitability of Xenium
6 with any competitor products?

7 A No. There is no data in the record of
8 this proceeding that would allow me to do so.

9 Q So even without a comparison of sales,
10 sales growth and profitability of Xenium with a
11 competitor product, you conclude that Xenium is
12 commercially successful; is that right?

13 A I do.

14 Q Is there numerical range when sales of a
15 product is considered commercially successful?

16 DR. KHANDURI: Objection. Form.

17 BY THE WITNESS:

18 A I'm not aware of any such established
19 range.

20 BY MR. CHEUNG:

21 Q Is there a numerical range when sales
22 growth of a product is considered commercially

1 successful?

2 DR. KHANDURI: Objection. Form.

3 BY THE WITNESS:

4 A Likewise, I'm not aware of any standard
5 range for that, either.

6 BY MR. CHEUNG:

7 Q Is there a numerical range when
8 profitability of a product is considered
9 commercially successful?

10 DR. KHANDURI: Objection. Form.

11 BY THE WITNESS:

12 A Once again, I'm not aware of any
13 established or standard range for evaluating
14 commercial success related to profitability
15 specifically.

16 BY MR. CHEUNG:

17 Q I'm going to direct you to Paragraph 32 of
18 your declaration. Please let me know when you're
19 there.

20 A I have that in front of me.

21 Q Do you understand that there must be a
22 nexus between the '554 patent claims and the

1 evidence of commercial success?

2 A For the purposes that we're addressing
3 this topic in this context, the answer is yes.

4 Q And what is the nexus between the '554
5 patent and the evidence of commercial success of
6 Xenium?

7 A Dr. Shroff has described that in his
8 report. I understand that he has concluded that
9 there is a nexus between the claimed invention and
10 the evidence of commercial success and he has
11 explained his opinion that the 10x Xenium products
12 embody the claims of the '554 patent.

13 Q So is your understanding that there is a
14 nexus between the '554 patent and the evidence of
15 commercial success of Xenium because the Xenium
16 embodies the claims of the '554 patent challenged
17 in this IPR?

18 A I think I need you to ask that again,
19 please. One more time.

20 Q Your understanding that there is a nexus
21 between the '554 patent claims and the evidence of
22 commercial success of Xenium is that because of

1 your understanding that Xenium embodies the claims
2 of the '554 patent challenged in this IPR?

3 A More specifically, my understanding that
4 there is a nexus between the '554 patent and the
5 commercial success comes from my review of
6 Dr. Shroff's declaration. He has opined there is
7 such a nexus and I have relied upon that opinion.

8 Q Is Dr. Shroff's opinion that there is a
9 nexus because Xenium embodies the claims of the
10 '554 patent?

11 A You're asking me how he arrived at his
12 opinion that there is a nexus?

13 Q Correct. What is your understanding of
14 why Dr. Shroff opines that there is a nexus?

15 DR. KHANDURI: Objection. Form, scope,
16 foundation, relevance.

17 BY THE WITNESS:

18 A I think that question is better directed
19 to Dr. Shroff since it is his opinion that I am
20 relying upon; however, he has detailed in his
21 report how he has arrived at that opinion and I
22 understand him to start with explaining how the

1 Xenium products embody the claims of the '554
2 patent and then go on to describe it from there.

3 BY MR. CHEUNG:

4 Q So is it fair to say that your
5 understanding that Xenium embodies the claims of
6 the '554 patent challenged in this IPR is entirely
7 from Dr. Shroff?

8 A Yes, I'm relying upon his opinion related
9 to that topic. That topic is outside my own
10 expertise.

11 Q I'd like to direct you to the last
12 sentence in Paragraph 32 of your declaration
13 where you state: "I understand that 10x's Xenium
14 embodies the claims of the '554 patent challenged
15 in this IPR".

16 Do you see that sentence?

17 A I do.

18 Q Is it your understanding the that the
19 Xenium instrument embodies the challenged '554
20 patent claims?

21 DR. KHANDURI: Objection. Scope,
22 relevance.

1 BY THE WITNESS:

2 A I would have to review Dr. Shroff's
3 declaration again to identify exactly what he was
4 pointing to as embodying the claims of the '554
5 patent.

6 BY MR. CHEUNG:

7 Q Do you see that for the sentence I
8 directed you to you cite Footnote 36 to
9 Exhibit 2024, Paragraphs 116 to 128?

10 A I do.

11 Q Do you understand that Exhibit 2024 is
12 Dr. Shroff's declaration in this case?

13 A I do.

14 Q If you can take a moment and bring up
15 Exhibit 2024 and review Paragraphs 116 to 128 on
16 your own and let me know when you're done.

17 A That's a passage that covers about
18 12 pages. I can review each of those paragraphs
19 if you like, but maybe we should start with
20 whatever questions you want to address so I know
21 what it is I'm looking for exactly.

22 Q So my question in the context of the

1 paragraphs in Dr. Shroff's declaration that you
2 cited is whether your understanding that Xenium
3 embodies the claims of the '554 patent are
4 directed to the Xenium instrument?

5 DR. KHANDURI: Objection. Form.

6 BY THE WITNESS:

7 A I'm aware that in these pages, he
8 addresses a lot of details about the Xenium
9 instrument. I don't know without rereading the
10 entire 12 or 13 pages whether there's any other
11 aspect in particular that he's pointing to here.

12 BY MR. CHEUNG:

13 Q Would you like to refresh your
14 recollection by reviewing Dr. Shroff's
15 declaration?

16 A Not particularly. I would prefer that
17 that issue be addressed by Dr. Shroff since he's
18 the one who is opining on it, on whether or not
19 the Xenium products body embody the claims of the
20 '554 patent.

21 Q But my question is directed to your
22 understanding of what is embodied in Xenium by the

1 claims of the '554 patent.

2 So my question is whether your
3 understanding of what Dr. Shroff opined on is
4 directed at the Xenium instrument?

5 DR. KHANDURI: Objection. Form.

6 BY THE WITNESS:

7 A I think in these pages that we've been
8 talking about, he is focussed primarily on claim
9 36 and its elements and each of those aspects he's
10 pointing to the instrument himself.

11 BY MR. CHEUNG:

12 Q You're not saying that Xenium consumables
13 embody the challenged '554 patent claims, right?

14 A I do not have an opinion on whether the
15 Xenium consumables embody the claims of the '554
16 patent.

17 Q Do you have an understanding of whether
18 Xenium consumables embody the challenged '554
19 patent claims?

20 A I don't know. I'm aware of those
21 consumables can only be used with the Xenium
22 instrument. Likewise the Xenium instrument can

1 only be used with those consumables, so,
2 therefore, for the systems and methods to be
3 practiced I would expect that you would need both
4 types of products.

5 Q Do you know whether Dr. Shroff opined on
6 whether the Xenium consumables embodied the
7 challenged '554 patent claims?

8 A Without reviewing his declaration in more
9 detail right now, I do not recall whether he
10 addresses that specifically.

11 Q Do you know whether Xenium services embody
12 the challenged '554 patent claims?

13 A The services provided by 10x related to
14 Xenium use the Xenium instrument. That instrument
15 as we've already discussed embodies the claims of
16 the '554 patent.

17 Q Do you know whether the service provided
18 by 10x related to Xenium itself embodies the
19 challenged '554 patent claims?

20 DR. KHANDURI: Objection. Form.

21 BY THE WITNESS:

22 A I don't know what you mean in that

1 question. I'm familiar with the services provided
2 by 10x and they provide the involve the use of the
3 Xenium instrument and consumables to provide
4 output for customers.

5 BY MR. CHEUNG:

6 Q Is the service provided by 10x related to
7 Xenium a system?

8 A The services provided by 10x use the
9 Xenium system.

10 Q But you don't contend that the service
11 itself is a system, right?

12 A As a layperson, I would not think of the
13 service itself as being a system. It is a
14 workflow that is used by 10x and the instrument in
15 order to provide data for customers.

16 Q Is the consumables provided by 10x related
17 to Xenium a system?

18 A I don't have a view on that.

19 Q So you don't have any understanding
20 whether Xenium consumables themselves are a system
21 or not, right?

22 A I don't have an opinion on whether the

1 consumables are a system.

2 Q Do you know whether Dr. Shroff discusses
3 Xenium consumables and services in Paragraphs 116
4 to 128 of the his declaration?

5 A I don't remember.

6 Q Can you tell me whether the words services
7 or consumables appear in Dr. Shroff's declaration
8 between Paragraphs 116 to 128?

9 A I don't know.

10 Q Do you have Dr. Shroff's declaration in
11 front of you?

12 A I do.

13 Q Are you able to perform a word search on
14 that declaration?

15 A I can perform such a search. What would
16 you like me to be searching for?

17 Q Does the word "consumables" appear
18 anywhere in paragraphs 116 to 128?

19 A I do not see that word in that passage.

20 Q Does the word "services" appear anywhere
21 in paragraphs 116 to 128?

22 A I do not see that word.

1 MR. CHEUNG: We've been going on for about
2 an hour now. Let's go off the record and take a
3 break.

4 THE WITNESS: I'm happy to keep going if
5 it works for everybody else.

6 MR. CHEUNG: Okay. It works for me. Just
7 let me know if you want a break, Ms. Davis.

8 THE WITNESS: Thank you.

9 BY MR. CHEUNG:

10 Q Are you aware of any exceptions where the
11 commercial success of an embodying product does
12 not support a patent's nonobviousness?

13 DR. KHANDURI: Objection. Form.

14 BY THE WITNESS:

15 A That's outside my expertise. I don't
16 know.

17 BY MR. CHEUNG:

18 Q Are you aware that the commercial success
19 of an embodying product due to features already in
20 the prior art cannot be used to support
21 nonobviousness?

22 DR. KHANDURI: Objection. Form.

1 BY THE WITNESS:

2 A That sounds like a legal question, and I
3 don't have a view on that.

4 BY MR. CHEUNG:

5 Q Are you aware of what features of Xenium
6 led to its commercial success?

7 A Not specifically. I would have to defer
8 to Dr. Shroff.

9 Q So to clarify, you do not have any
10 understanding of what specific features of Xenium
11 led to its commercial success; is that right?

12 A I have not tried to attribute commercial
13 success to any specific feature in the Xenium
14 products.

15 Q Would it be fair to say that you have no
16 understanding of whether the features that led to
17 Xenium's commercial success were already in the
18 prior art or not?

19 DR. KHANDURI: Objection. Form, scope.

20 BY THE WITNESS:

21 A I'd have to defer to Dr. Shroff to
22 identify what features were in the prior art

1 versus those features that are not in the prior
2 art.

3 BY MR. CHEUNG:

4 Q So sitting here today, you have no
5 understanding of what features led to Xenium's
6 commercial success or whether those features were
7 already in the prior art; is that right?

8 DR. KHANDURI: Objection. Form, scope.

9 BY THE WITNESS:

10 A I do not know what features might have
11 already been in the prior art.

12 BY MR. CHEUNG:

13 Q Do you know what products 10x sold prior
14 to launching Xenium?

15 A I have a general understanding of that,
16 yes.

17 Q What is your general understanding?

18 A I'm aware that 10x sold two other
19 platforms prior to the launch of the Xenium
20 platform. Those were characterized as Chromium
21 products and Visium products.

22 Q Are those two products in the same market

1 as Xenium?

2 A That depends on what you mean by market.
3 There would be some of the same customers who
4 purchase combinations of those products but the
5 Xenium products themselves compete with a narrower
6 portion of the market and products sold by other
7 competitors who perform those same functions.

8 Q Do you know what 10x's market share is in
9 the nay narrow portion of the market in products
10 sold by other competitors who perform the same
11 functions as Xenium?

12 DR. KHANDURI: Objection. Form.

13 BY THE WITNESS:

14 A If you're talking about the spacial
15 imaging products like NanoString's CosMx product
16 and Vizgen's MERSCOPE product, I do not.

17 (A certain document was marked
18 Davis Deposition Exhibit 2036 for
19 identification, as of 02/26/2025.)

20 BY MR. CHEUNG:

21 Q Ms. Davis, can you bring up Exhibit 2036
22 and let me know when you have that up.

1 A I have that right here.

2 Q From looking at the bottom left of the
3 first page, do you see that there is a web
4 address?

5 A I do.

6 Q Do you understand that this exhibit is a
7 copy of the web page noted on the footer there?

8 A I do.

9 Q You understand that this is a web page on
10 10x's website?

11 A Yes.

12 Q You see the first page is: High
13 Performance in Situ From the Single Cell Leader.
14 Do you see that?

15 A I do.

16 Q Why is 10x the single cell leader?

17 A At the time this Xenium product was
18 launched, the Chromium single cell products sold
19 by 10x had been in the market for several years
20 and 10x had a strong presence in that market.

21 Q At the time Xenium was launched did 10x
22 have a dominant position in single cell products

1 with Chromium?

2 A I'm aware that at the time Xenium was
3 launched, the products sold into the Chromium part
4 of the market were such that the Chromium products
5 had the highest market share of other products in
6 that single cell space which of course is
7 different than the Xenium products.

8 Q Is it your understanding that 10x was a
9 single cell leader prior to the launch of
10 Xenium?

11 A Yes. I think prior to the launch of
12 Xenium, 10x had a large market share that was
13 greater than its competitors in the single cell
14 space.

15 Q Does 10x continue to be a single cell
16 leader?

17 A You're asking a lot of questions that are
18 based upon my knowledge of information that's not
19 in the record of this case, but, yes, my
20 understanding is that 10x continues to be a market
21 share leader in the single cell product line.

22 Q Does being the single cell leader mean

1 that 10x has name recognition to potential
2 customers?

3 DR. KHANDURI: Objection. Scope, form.

4 BY THE WITNESS:

5 A I don't think you have to be the single
6 cell leader to have name wreck it anything. I
7 think there are a number of companies that have
8 name recognition in that space.

9 BY MR. CHEUNG:

10 Q One of the companies with name recognition
11 in that case is 10x, right?

12 A 10x and NanoString and Vizgen all have
13 name recognition in the spacial imaging space if
14 that's the space you're talking about.

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12 Q Do you know what products compete with
13 Xenium?

14 A Generally speaking, yes.

15 Q What are those products?

16 A I understand that to be the CosMx platform
17 sold by NanoString and the MERSCOPE platform sold
18 by Vizgen among others.

19 Q Do you know if CosMx and MERSCOPE embodies
20 the '554 patent claims?

21 DR. KHANDURI: Objection. Form, scope,
22 relevance.

1 BY THE WITNESS:

2 A I'm aware that Dr. Shroff has opined that
3 the CosMx platform embodies the '554 patented
4 technology. To my knowledge he's not addressed
5 the MERSCOPE platform.

6 BY MR. CHEUNG:

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1 DR. KHANDURI: Objection. Scope, form,

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Q I'm a going to direct you to Paragraph 37
of your declaration.

A I have that open.

Q Do you see the first sentence where you
state: "The commercial success of the '554
patent's claimed system is also illustrated
through the rapid adoption of 10x's Xenium after
launch."

Do you see that sentence?

A I do.

Q Why do you say that Xenium was rapidly
adopted after launch?

A The next sentence explains that.

Q So is it your understanding Xenium was
rapidly adopted after launch because more than 250

1 Xenium instruments were sold in the first year
2 after launch?

3 A As I describe in that sentence and as that
4 particular exhibit shows, 10x was counting the
5 fact that there were that many instruments sold in
6 the first year and explaining that that was rapid
7 adoption and that the researchers were pointing
8 specifically to the sensitivity, specificity and
9 high throughput of the Xenium products.

10 Q So is it your understanding that 10x
11 considered Xenium to be rapidly adopted after
12 launch because it sold more than 250 Xenium
13 instruments in the first year and researchers
14 validated Xenium's sensitivity, specificity and
15 high throughput?

16 DR. KHANDURI: Objection. Form.

17 BY THE WITNESS:

18 A Those are two different thoughts, but,
19 yes, the document that I'm referencing there shows
20 that that the 250 Xenium instruments, more than
21 250 Xenium instruments that were sold in that
22 first year was considered a very rapid adoption by

1 10x.

2 BY MR. CHEUNG:

3 Q Do you consider more than 250 Xenium
4 instruments to be sold in the first year after
5 launch to be evidence of rapid adoption of 10x's
6 Xenium?

7 DR. KHANDURI: Objection. Form.

8 BY THE WITNESS:

9 A When you're talking about instruments that
10 can cost a quarter million dollars, yes, that's a
11 lot of instruments to be placed in the hands of
12 researchers who were willing to pay a lot of money
13 to have access to that technology particularly in
14 light of the fact that the other two competitors
15 were already in the market at that time.

16 BY MR. CHEUNG:

17 Q So you agree that Xenium was rapidly
18 adopted after launch because more than 250 Xenium
19 instruments were sold in the first year after
20 launch, right?

21 DR. KHANDURI: Objection. Form.

22 BY THE WITNESS:

1 A I agree with 10x where it stated in its
2 document that I'm referencing here that the more
3 than 250 instruments that were sold in that first
4 year represents rapid adoption of that particular
5 platform.

6 BY MR. CHEUNG:

7 Q What is the minimum number of instruments
8 sold in the first year after launch where Xenium
9 would not be considered to have been rapidly
10 adopted?

11 DR. KHANDURI: Objection. Form.

12 BY THE WITNESS:

13 A I don't know. I've not tried to set a
14 minimum threshold for adoption rates.

15 (A certain document was marked
16 Davis Deposition Exhibit 2040 for
17 identification, as of 02/26/2025.)

18 BY MR. CHEUNG:

19 Q Do you see that in Paragraph 37 you cite
20 to Exhibit 2040?

21 A I do.

22 Q Can you bring up Exhibit 2040.

1 A I'll do that.

2 Q What is this document?

3 A I'm still opening it. Just a second.

4 Q Yes. Of course.

5 A This is the document that I reference in
6 Paragraph 37. It is a presentation made to the
7 J.P. Morgan Healthcare Conference by the CEO and
8 cofounder of 10x.

9 Q Do you know what the J.P. Morgan
10 Healthcare Conference is?

11 A My recollection is it is a conference that
12 takes place annually, and J.P. Morgan invites
13 companies who are in the space to present
14 information about their company and their
15 products.

16 Q Who was these slides presented to?

17 DR. KHANDURI: Objection to form.

18 BY THE WITNESS:

19 A Are you asking me who specifically was in
20 the audience?

21 BY MR. CHEUNG:

22 Q No. Well, what type of audience are at

1 this conference that would listen to the CEO of
2 10x making this presentation?

3 DR. KHANDURI: Objection. Form.

4 BY THE WITNESS:

5 A I don't know specifically who was at this
6 particular conference, however, I would expect
7 that it is invested -- that it is directed in part
8 to investors who are looking at investing in this
9 particular market and the various companies who
10 sell products in that market.

11 BY MR. CHEUNG:

12 Q This slide deck is created by 10x, right?

13 A Yes, it is.

14 Q In your declaration at Paragraph 37, you
15 cite to Pages 5 to 8 of this document, so let's
16 turn to Page 5 and let me know when you're there.

17 A I have that open.

18 Q Is it from this slide where you understood
19 that 10x sold 250-plus Xenium instruments in one
20 year after launch?

21 A Yes, that's where I got that particular
22 information.

1 Q Is your opinion on the rapid adoption of
2 Xenium based on the title of this slide which is:
3 "An exceptional launch year for Xenium"?

4 A And the rest of that slide which talks
5 about rapid customer adoption and points to the
6 250 plus cumulative Xenium instruments sold just
7 one year since launch!

8 Q Do you agree with this slide that Xenium
9 had an exceptional launch year?

10 A I don't have reason to apply an adjective
11 to that, however, I would expect that
12 most companies in this space would be very happy
13 with the placement of 250 instruments costing as
14 much as a quarter million dollars each.

15 Q I'm going to direct you back to
16 Paragraph 37 of your declaration. Let me know
17 when you're there.

18 A I am.

19 Q Do you see the last sentence of
20 Paragraph 37 which is on the next page that --
21 where you state: "Dr. Shroff further explained
22 that without the patented technology, Xenium would

1 not experience the sale level of success".

2 Do you see that sentence?

3 A I do.

4 Q Do you see that for that sentence Footnote
5 45, you cite to Paragraph 129 of Dr. Shroff's
6 declaration.

7 A I do.

8 Q Do you have an independent understanding
9 why Xenium would not experience the same level of
10 success without the patented technology of the
11 '554 patent other than what is in Paragraph 129 of
12 Dr. Shroff's declaration?

13 A No. I relied on Dr. Shroff and his
14 opinion as expressed in his declaration.

15 Q If you can pull up Dr. Shroff's
16 declaration and go to Paragraph 129.

17 A I have that open.

18 Q You can look at the top of Page 114. Do
19 you see the first two complete sentences which
20 reads: "Prior to the commercial availability of
21 Xenium and CosMx, few labs would have had access
22 to a complete system for volumetric imaging. At

1 best, labs would have had access to home-built
2 setups that were unwieldy, sprawling and laborious
3 to assemble or difficult to maintain".

4 Do you see that?

5 A I do.

6 Q Do you understand Dr. Shroff to explain
7 that one of the advantages that Xenium had over
8 prior systems is that Xenium is not a home-built
9 setup that is unwieldy, sprawling and laborious to
10 assemble or difficult to maintain?

11 A My general understanding of Dr. Shroff's
12 declaration is that the '554 patent automated the
13 method and apparatus for the 3D imaging and that's
14 part of what made it better than the unwieldy,
15 sprawling and laborious systems used prior to that
16 date.

17 Q And if you go to the last sentence in
18 Paragraph 129 of Dr. Shroff's declaration which
19 begins at the bottom of Page 114. And it reads:
20 "For example, without the technology of the '554
21 patent, Xenium and CosMx would not possess the
22 integrated hardware and software required for

1 effective in situ workflow in a volumetric imaging
2 system".

3 Do you see that?

4 A I do.

5 Q Do you understand Dr. Shroff to explain
6 that one of the advantages of Xenium over previous
7 systems is that Xenium is an integrated hardware
8 and software system that is effective for in situ
9 workflow in a volumetric imaging system?

10 A Yes. That's what I understand him to be
11 saying.

12 Q Do you see that the title for
13 Paragraph 129 of Dr. Shroff's declaration is that
14 the volumetric imaging system of the '554 patent
15 satisfied a long felt but unmet need for a
16 complete volumetric imaging system.

17 Do you see that title?

18 A I do.

19 Q Is it your understanding that Xenium is
20 meeting an unmet need because Xenium is an
21 integrated hardware and software that allows for
22 effective in situ workflow in a volumetric imaging

1 system?

2 DR. KHANDURI: Objection. Form.

3 BY THE WITNESS:

4 A That's generally consistent with my
5 understanding of what he is saying in his
6 declaration.

7 BY MR. CHEUNG:

8 Q Is the integration of Xenium being an
9 integrated hardware and software system for
10 effective in situ workflow in a volumetric imaging
11 system a driver for customer demand because it
12 solves an unmet need?

13 DR. KHANDURI: Objection. Form, scope.

14 BY THE WITNESS:

15 A I don't have a opinion on that.

16 BY MR. CHEUNG:

17 Q Is the feature of Xenium being an
18 integrated hardware and software system for
19 effective in situ workflow in a volumetric imaging
20 system a claimed feature of the challenged '554
21 patent claims?

22 DR. KHANDURI: Objection. Form, scope,

1 relevance.

2 BY THE WITNESS:

3 A That's outside my expertise but I would
4 have to defer to Dr. Shroff on that.

5 BY MR. CHEUNG:

6 Q So you do not have an understanding
7 independent from Dr. Shroff, correct?

8 A I do not have an understanding independent
9 of Dr. Shroff related to the scope of the claims
10 for the '554 patent.

11 Q I'm going to direct you to Paragraph 36 of
12 your declaration. Let me know when you're there.

13 DR. KHANDURI: Counsel, can we take a
14 break. It's been almost two hours if Ms. Davis
15 does not mind.

16 THE WITNESS: That's fine with me.

17 MR. CHEUNG: Okay. Let's take a break.

18 (A recess was had.)

19 BY MR. CHEUNG:

20 Q Ms. Davis, during the break did you speak
21 with anyone about the substance of this
22 deposition?

1 A I have not.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Q I will direct you now to Paragraph 36 of
9 your declaration.

10 A I have that open in front of me.

11 Q Do you see the first sentence of that
12 paragraph where you state, and I quote: "The
13 technology covered by the '554 patent has been a
14 significant driver of customer demand for Xenium"?
15 Do you see that?

16 A I do.

17 Q What is your basis for stating that the
18 technology covered by the '554 patent has been a
19 significant driver of customer demand for Xenium?

20 A That is a summary of what I go on to
21 present in the rest of that paragraph and the
22 next.

1 Q Is your understanding of why the
2 technology covered by the '554 patent has been a
3 significant driver of customer demand for Xenium
4 entirely from Dr. Shroff?

5 A It is based upon my understanding from
6 Dr. Shroff of the importance of the patented
7 technology, yes.

8 Q Do you have an understanding besides
9 Dr. Shroff's declaration of why the technology
10 covered by the '554 patent has been a significant
11 driver of customer demand for Xenium?

12 A As we talked about with respect to the
13 document I reference in Paragraph 37 of my
14 declaration, that is further support for
15 Dr. Shroff's opinion regarding that particular
16 aspect.

17 Q Limiting to the factor of customer demand
18 for Xenium, is your understanding of the
19 technology covered by the '554 patent entirely
20 from Dr. Shroff's declaration?

21 A My understanding of the technology covered
22 by the '554 patent is coming from Dr. Shroff's

1 declaration.

2 Q Is your understanding that the technology
3 covered by the '554 patent as a driver of customer
4 demand for Xenium also from Dr. Shroff?

5 DR. KHANDURI: Objection. Form.

6 BY THE WITNESS:

7 A My understanding is that Dr. Shroff has
8 opined that that patented technology that's
9 covered by the '554 patent is a driver of demand
10 that is also supported by the information that I
11 provide in Paragraphs 36 and 37 whereby the
12 benefits of the '554 patent's claimed system
13 including sensitivity, specificity and high
14 throughput are all addressed in the document that
15 we looked at related to Paragraph 37.

16 BY MR. CHEUNG:

17 Q So your understanding that the technology
18 covered by the '554 patent has been a significant
19 driver of customer demand for Xenium is from
20 Dr. Shroff's opinion and from 10x's presentation
21 at the J.P. Morgan healthcare conference; is that
22 right?

1 DR. KHANDURI: Objection.

2 BY THE WITNESS:

3 A It is correct to say that my understanding
4 of Dr. Shroff's opinion about what is driving the
5 commercial success is coming from his declaration
6 and I pointed to the document that is referenced
7 in Paragraph 37 as just an example of that.

8 BY MR. CHEUNG:

9 Q Would your opinion on whether the
10 technology covered by the '554 patent has been a
11 significant driver of customer demand a for Xenium
12 change if Dr. Shroff does not know what features
13 made Xenium commercially successful?

14 DR. KHANDURI: Objection. Form.

15 BY THE WITNESS:

16 A I'm relying upon Dr. Shroff for his
17 opinions that the Xenium product is covered by the
18 '554 patent and for the benefits related to the
19 use of that patented technology. I think it there
20 is evidence in the record of this proceeding that
21 shows such a link.

22

1 BY MR. CHEUNG:

2 Q If you can pull up Exhibit 1082 or the
3 file titled Exhibit 1082.

4 A I have it open. It appears to be a
5 transcript from Dr. Shroff's deposition.

6 MR. CHEUNG: Can we have this exhibit
7 marked as Exhibit 1082.

8 (A certain document was marked Davis
9 Deposition Exhibit 1082 for
10 identification, as of 02/26/2025.)

11 BY MR. CHEUNG:

12 Q If you can turn to Page 44.

13 A Before we go on, are you talking about
14 Page 44 of the PDF or Page 44 printed on the --

15 Q Page 44 -- the page that's marked Page 44.
16 I think that's Page 45 of the PDF.

17 A I have that.

18 Q If I can direct you to Line 20 of that
19 page.

20 A I see that.

21 Q Do you see that Dr. Shroff was asked at
22 deposition: "Do you know what features made Xenium

1 commercially successful"?

2 A I see that.

3 Q If you turn to the following page, do you
4 see Dr. Shroff's answer where he states: "Same
5 answer, sir. I don't know what features exactly
6 makes it commercially successful."

7 Do you see Dr. Shroff's response as I've
8 just recited?

9 A I do.

10 Q Does Dr. Shroff's testimony that we just
11 cited change your opinion on whether the
12 technology covered by the '554 patent is a
13 significant driver of customer demand for
14 Xenium?

15 DR. KHANDURI: Objection. Scope, form,
16 foundation, relevance.

17 BY THE WITNESS:

18 A No. This passage from his deposition does
19 not change any of my opinions.

20 BY MR. CHEUNG:

21 Q Is that because your opinion is based on
22 what Dr. Shroff stated in his declaration that you

1 cite?

2 A I am basing my declaration upon his
3 declaration and as I pointed out in Paragraph 37,
4 he explained in his declaration that without the
5 patented technology, Xenium would not experience
6 the same level of success.

7 Q In the phrase that you use, the technology
8 covered by the '554 patent, are you referring to
9 the challenged '554 patent claims?

10 A If we're talking about the sentence at the
11 top of Page 17 of my declaration, I am addressing
12 what Dr. Shroff said in his declaration. He
13 explained that without the patented technology,
14 Xenium would not experience the same level of
15 success. If we want to know specifics about what
16 exactly what he was pointing to, we'd have to
17 return to his declaration and try to sort that out
18 or we can simply ask him.

19 Q I'm asking that in Paragraph 36, the first
20 sentence discusses the technology covered by the
21 '554 patent and your second sentence discusses the
22 '554 patent claims.

1 So my question is: Are they both
2 referring to the same thing?

3 A My understanding of what Dr. Shroff has
4 addressed in his declaration are those patent
5 claims that are found in the '554 patent.

6 Q So is it your understanding that when
7 Dr. Shroff's declaration talks about the
8 technology covered by the '554 patent, he is
9 talking about the challenged '554 patent claims?

10 A You're asking a question that's better
11 directed to Dr. Shroff. I would have to pull out
12 his declaration and go paragraph by paragraph
13 where he's addressing these particular issues and
14 see if I could figure out the answer to that, but
15 I don't want to put words in his mouth because I'm
16 not the one who submitted that declaration.

17 Q So sitting here today you don't have an
18 understanding one way or the other whether the
19 technology covered by the '554 patent that is a
20 significant driver of customer demand for Xenium
21 is the challenged '554 patent claims?

22 DR. KHANDURI: Objection. Form.

1 BY THE WITNESS:

2 A My recollection of Dr. Shroff's
3 declaration is that it is focused on the
4 challenged claims.

5 BY MR. CHEUNG:

6 Q Just to clarify, you don't have any
7 independent understanding; is that right?

8 DR. KHANDURI: Objection. Form.

9 BY THE WITNESS:

10 A I do not. I do not have the technical
11 expertise to have an independent view or opinion
12 on that subject.

13 BY MR. CHEUNG:

14 Q Similarly, your second sentence in had
15 Paragraph 36 that the '554 patent claims are
16 directed to a system that integrates hardware and
17 software components to implement in situ workflow,
18 is that understanding also entirely from
19 Dr. Shroff's declaration?

20 DR. KHANDURI: Objection. Form.

21 BY THE WITNESS:

22 A Yes, I'm relying in that sentence upon

1 Dr. Shroff's declaration.

2 BY MR. CHEUNG:

3 Q And your third sentence in that paragraph
4 where you state that: "There is also evidence
5 that Xenium had enjoyed recognition for the
6 features that are the benefits of the '554
7 patent's claimed system over prior setups."

8 Do you see that?

9 A I do.

10 Q What is the basis of your opinion that
11 there is also evidence that Xenium has enjoyed
12 recognition for the features that are the benefits
13 of the '554 patent's claimed system over prior set
14 ups?

15 A As you see by the footnote there, I am
16 once again relying upon Dr. Shroff's declaration.
17 Those Paragraphs 130 and 131 cite a number of
18 different pieces of evidence that support that.

19 Q Do you have an independent understanding
20 outside of paragraphs 130 and 131 of Dr. Shroff's
21 declaration?

22 A Generally I had have understood him to be

1 saying is or to describe what those benefits are
2 and as I pointed out in Paragraph 37 there are
3 other points of reference that we could look to
4 that support his view, one of those is the one I
5 identified in that paragraph.

6 Q So the evidence that you're referring to
7 there in Paragraph 36, that evidence is what's in
8 Paragraph 130 and 131 of Dr. Shroff's declaration,
9 right?

10 A It is.

11 Q Is there any additional evidence that is
12 not in those two paragraphs?

13 A As it relates to that particular sentence
14 in Paragraph 36, I was looking only at those two
15 paragraphs.

16 Q Let's turn to Dr. Shroff's declaration
17 which is Exhibit 2024 and go to Paragraphs 130 and
18 131.

19 (A certain document was marked
20 Davis Deposition Exhibit 2024 for
21 identification, as of 02/26/2025.)

22 BY THE WITNESS:

1 A I have that open.

2 BY MR. CHEUNG:

3 Q Do you see that these two paragraphs are
4 under a title of: "Those in the industry praise
5 Xenium's streamlined workflow and ability to
6 provide high resolution spacial data."

7 Do you see that?

8 A I do.

9 Q Do you agree that Paragraphs 130 and 131
10 are generally about Xenium's industry praise?

11 A Yes, I think it's fair to say that those
12 two paragraphs address industry praise.

13 Q I want to direct you to Paragraph 131, do
14 you see Dr. Shroff's opinion that Xenium has been
15 praised for the breadth of the systems's
16 sequencing ability?

17 A I see that.

18 Q Do you see Dr. Shroff's opinion that
19 Xenium has been praised for the smooth workflow of
20 integrated imaging system?

21 A I see that as well.

22 Q Do you see Dr. Shroff's opinions that

1 Xenium has been praised for its computing system
2 capable of streamlining the data interpretation
3 capability and ability to provide high resolution
4 spacial data for nucleic acid molecules?

5 A I see that as well.

6 Q Do you agree that a driver for customer
7 demand of Xenium is the breadth of the system's
8 sequencing ability?

9 A I don't have an opinion on that.

10 Q Do you have an opinion on whether a driver
11 for customer demand an on Xenium is the smooth
12 workflow of the integrated imaging system?

13 A I do not have an opinion on that.

14 Q Do you have an opinion on whether a driver
15 for customer demand of Xenium is its computing
16 system capable of streamlining the data
17 interpretation capability and ability to provide
18 high resolution spacial data for nucleic acid
19 molecules?

20 A I do not have an opinion on that.

21 Q Do you have an opinion on whether the
22 features for which Xenium has received industry

1 praise is a driver for customer demand of
2 Xenium?

3 A When you use the word features, what do
4 you have in mind?

5 Q By features I'm referring to the three
6 things that Dr. Shroff has summarized in
7 Paragraph 131, which is the breadth of the
8 system's sequencing ability, the smooth workflow
9 of the integrated imaging system, and its
10 computing system capable of streamlining the data
11 interpretation capability and ability to provider
12 high resolution spacial data for nucleic acid
13 molecules?

14 DR. KHANDURI: Objection. Form.

15 BY THE WITNESS:

16 A Okay, now that I understand those are the
17 features you're talking about in your prior
18 question, could you ask your question again,
19 please?

20 BY MR. CHEUNG:

21 Q Do you have an opinion on whether the
22 features for which Xenium has received industry

1 praise as summarized in Paragraph 131 of
2 Dr. Shroff's declaration, are these a driver for
3 customer demand of Xenium?

4 DR. KHANDURI: Objection. Form.

5 BY THE WITNESS:

6 A I do not have an opinion on that.

7 BY MR. CHEUNG:

8 Q Do you have an opinion on whether the
9 Xenium platform having a breadth of sequencing
10 ability is an inventive feature of the challenged
11 '554 patent claims?

12 DR. KHANDURI: Objection. Form, scope.

13 BY THE WITNESS:

14 A I do not. That's outside my expertise.

15 BY MR. CHEUNG:

16 Q Do you have an opinion on whether the
17 Xenium platform having a smooth workflow of the
18 integrated imaging system is an inventive feature
19 of the challenged '554 patent claims?

20 DR. KHANDURI: Objection. Form, scope.

21 BY THE WITNESS:

22 A I do not. Once again, that is outside my

1 expertise.

2 BY MR. CHEUNG:

3 Q And lastly, do you have an opinion on
4 whether the Xenium platform having a computing
5 system capable of streamlining the data
6 interpretation capability and ability to provide
7 high resolution spacial data for nucleic acid
8 molecules is an inventive feature of the
9 challenged '554 patent claims?

10 DR. KHANDURI: Objection. Form, scope.

11 BY THE WITNESS:

12 A No, I have no opinion on that.

13 BY MR. CHEUNG:

14 Q Do you know about 10x's marketing strategy
15 for Xenium?

16 DR. KHANDURI: Objection. Form.

17 BY THE WITNESS:

18 A I don't know what you mean exactly.

19 BY MR. CHEUNG:

20 Q Do you know how 10x marketed Xenium?

21 DR. KHANDURI: Objection. Form.

22 BY THE WITNESS:

1 A I have seen materials in other proceedings
2 that reflect marking by 10x of Xenium, but I have
3 not seen similar materials in the record of this
4 case so I cannot answer that based upon the
5 information in this proceeding.

6 BY MR. CHEUNG:

7 Q Do you know how much 10x spent on
8 marketing Xenium?

9 DR. KHANDURI: Objection. Form.

10 BY THE WITNESS:

11 A I'm not recalling any specific dollar
12 amounts in the record of this case that show how
13 much 10x spent on marketing Xenium.

14 BY MR. CHEUNG:

15 Q Do you know what percentage of gross sales
16 of Xenium were used to market Xenium?

17 DR. KHANDURI: Objection. Form, scope.

18 BY THE WITNESS:

19 A I understood your question to ask about
20 percentage of growth.

21 BY MR. CHEUNG:

22 Q Sorry. Percentage of gross sales.

1 A Now I understand.

2 Q For use on marketing.

3 A Thank you, now that I understand what
4 you're saying I could you repeat the question,
5 please?

6 Q Do you know what percentage of the gross
7 sales of Xenium were used for marketing Xenium?

8 A No. To my knowledge, that information is
9 not in the record of this proceeding.

10 Q Do you know how 10x's spend on marketing
11 Xenium compares with the marketing spend on
12 competitive products?

13 DR. KHANDURI: Objection. Form.

14 BY THE WITNESS:

15 A No, to my knowledge, there is no
16 information in the record of this proceeding that
17 reflects the amount spent by competitors on
18 similar products.

19 BY MR. CHEUNG:

20 Q I'm going to direct you to Exhibit 2040
21 that is the J.P. Morgan conference slides we
22 looked at earlier. And please turn to Slide 16.

1 Let me know when you're there.

2 A Okay. I have Slide 16 open.

3 Q Do you see the header near the center of
4 the slide which reads: "The in situ performance
5 leader"?

6 A I do see that.

7 Q Do you see that under that heading there
8 are five bullet points?

9 A I see those five bullet points.

10 Q Do you understand that these are features
11 of Xenium that 10x is highlighting?

12 A I don't know that I would characterize
13 those as features but I do see that these are five
14 bullet points that Xenium is using to -- I'm
15 sorry, 10x is using to support its statement that
16 Xenium is the in situ performance leader.

17 Q Do you agree that these are five
18 characteristics of Xenium that 10x is using to
19 support its statement that Xenium is the in situ
20 performance leader?

21 DR. KHANDURI: Objection. Form.

22 BY THE WITNESS:

1 A I see that there are five different bullet
2 points here. I don't see them as necessarily
3 being parallel with one another so I don't know if
4 they would be described as features or
5 characteristics, but these are comments made by
6 10x to support the view that Xenium is the in situ
7 performance leader.

8 BY MR. CHEUNG:

9 Q You agree that these are the five aspects
10 of Xenium that that 10x is choosing to highlight
11 when it's presented at this J.P. Morgan Chase
12 Healthcare Conference, right?

13 DR. KHANDURI: Objection. Form.

14 BY THE WITNESS:

15 A Those are the five bullet points that are
16 included on this slide. There are a number of
17 other slides that also highlight aspects of
18 Xenium.

19 BY MR. CHEUNG:

20 Q Would a customer purchase Xenium because
21 it is independently validated as the best
22 performing in situ platform?

1 DR. KHANDURI: Objection. Form.

2 BY THE WITNESS:

3 A Yes. I would expect that customers who
4 purchase Xenium want to know that the platform
5 works for its he intended purpose. They would be
6 looking at metrics like those shown on slide seven
7 of this presentation that compare the Xenium
8 product with the MERSCOPE and CosMx products and
9 the sensitivity, specificity and higher throughput
10 metrics used there I understand to relate to the
11 patented technology.

12 BY MR. CHEUNG:

13 Q Would a customer purchase Xenium because
14 it is a fully integrated system with easy-to-run
15 workflow?

16 DR. KHANDURI: Objection. Form.

17 BY THE WITNESS:

18 A Once again, I'm not a customer, however, I
19 would expect that any customer who is going to
20 purchase this product wants it to work for its
21 intended purpose and the more integrated and easy
22 to run that it is, the better it will be received.

1 BY MR. CHEUNG:

2 Q Would a customer purchase Xenium because
3 it has on board analysis and intuitive software to
4 immediately access data?

5 DR. KHANDURI: Objection. Form.

6 BY THE WITNESS:

7 A As compared with other products in this
8 market, this bullet point alone is not going to
9 persuade somebody to purchase the Xenium product
10 as compared to the others because all of them have
11 software.

12 BY MR. CHEUNG:

13 Q Would a customer purchase Xenium because
14 it is -- it has customizable biologically relevant
15 content panels?

16 DR. KHANDURI: Objection. Form, scope.

17 BY THE WITNESS:

18 A Once again, I would expect that this is a
19 characteristic of all the other platforms sold by
20 competitors. They all sell a variety of different
21 panels. To my knowledge, they also provide
22 customized panels so it's up to the customer to

1 figure out which of the panels available in the
2 market are most suited or best suited for his or
3 her intended purpose.

4 BY MR. CHEUNG:

5 Q For some customers, they would be inclined
6 to purchase the Xenium because it possesses
7 customizable, biologically relevant content
8 panels, right?

9 DR. KHANDURI: Objection. Form, scope.

10 BY THE WITNESS:

11 A Once again, I'm not a customer but my
12 understanding is that all of the competitors in
13 this market provide content panels that are
14 hopefully biologically relevant to the customer
15 and if not they can be customized to that
16 customer's specifications.

17 BY MR. CHEUNG:

18 Q Would a customer purchase Xenium because
19 it is compatible with standard pathology including
20 H&E?

21 DR. KHANDURI: Objection. Form, scope.

22 BY THE WITNESS:

1 A Without looking through the rest of this
2 presentation again to remind he me I don't even
3 know what H&E means in this context so I cannot
4 answer your question.

5 BY MR. CHEUNG:

6 Q Is Xenium being independently validated as
7 best performing in situ platform an inventive
8 feature of the challenged '554 patent claims?

9 DR. KHANDURI: Objection. Form, scope.

10 BY THE WITNESS:

11 A I don't know. That's outside my
12 expertise.

13 BY MR. CHEUNG:

14 Q Is Xenium having a fully integrated system
15 with easy-to-run workflow an inventive feature of
16 the challenged '554 patent claims?

17 DR. KHANDURI: Objection, form, scope.

18 BY THE WITNESS:

19 A I don't know. That, too, is outside my
20 expertise.

21 BY MR. CHEUNG:

22 Q Is Xenium having onboard analysis and

1 intuitive software to immediately access data
2 inventive feature of the challenged '554 patent
3 claims?

4 DR. KHANDURI: Objection. Form, scope.

5 BY THE WITNESS:

6 A Once again, I don't know. That is outside
7 my expertise.

8 BY MR. CHEUNG:

9 Q Is Xenium having customizable biologically
10 relevant content panels an invent he I have
11 feature of the challenged '554 patent claims?

12 DR. KHANDURI: Objection. Form, scope.

13 BY THE WITNESS:

14 A I can't answer that. That is outside my
15 expertise.

16 BY THE WITNESS:

17 Q Is Xenium being be compatible with
18 standard pathology including H&E an inventive
19 feature of the challenged '554 patent claims?

20 DR. KHANDURI: Objection. Form, scope.

21 BY THE WITNESS:

22 A Once again, I'm not the person who

1 determine what the inventive features are of the
2 '554 patent claims so I cannot answer your
3 question.

4 BY MR. CHEUNG:

5 Q I'm going to direct you to Appendix A
6 of your declaration. Let me know when you're
7 there.

8 A I am.

9 Q Do you see on one of the documents that
10 you relied upon at least on this table is Exhibit
11 2035?

12 A Yes, I see that.

13 (A certain document was marked
14 Davis Deposition Exhibit 2025 for
15 identification, as of 02/26/2025.)

16 BY MR. CHEUNG:

17 Q Please bring up Exhibit 2035 which is a
18 press release titled: 10x Genomics commercially
19 launches Xenium platform over in situ analysis.

20 Let me know when you have that open?

21 A I have that open.

22 Q I'm going to direct your attention to the

1 bottom of the second page of this press release,
2 do you see the last sentence on this page which
3 states: "Select key features of the Xenium
4 platform include"...

5 A I do.

6 Q And then on the following page do you see
7 that there are five key features of the Xenium
8 platform that are listed?

9 A I do see those five bullet points.

10 Q Do you understand that these five bullet
11 points are the key features of Xenium that 10x is
12 highlighting in this press release?

13 DR. KHANDURI: Objection. Form.
14 Foundation.

15 BY THE WITNESS:

16 A I agree that those five bullet points are
17 described as select key features of the Xenium
18 platform.

19 BY MR. CHEUNG:

20 Q Do you agree that a select key feature of
21 the Xenium platform is that it has class-leading
22 speed and throughput?

1 A I see that that's what the document says.
2 If you're asking me whether I agree that it's a
3 key feature, that's outside my expertise.

4 Q Do you agree that 10x thinks that a key
5 feature of the Xenium platform is that it has
6 class hypothetical negotiation leading speed and
7 throughput?

8 DR. KHANDURI: Objection. Form, scope.

9 BY THE WITNESS:

10 A I agree that as of the date of this launch
11 announcement, that's what they were identifying as
12 being among the key features of the Xenium
13 platform.

14 BY MR. CHEUNG:

15 Q Do you agree that 10x identified as a
16 select key feature of the Xenium platform and
17 launch is that it has a broad menu of gene
18 panels?

19 A I see that that is a bullet point on this
20 list.

21 Q Did you agree that 10x identified as a
22 select key feature of the Xenium platform at

1 launch is that it is compatible with standard
2 pathology including H&E?

3 DR. KHANDURI: Objection. Form and
4 scope.

5 BY THE WITNESS:

6 A I see that bullet point listed here.

7 BY MR. CHEUNG:

8 Q Do you agree that 10x identified as a
9 select key feature of the Xenium platform at
10 launch is that it has comprehensive onboard
11 analysis?

12 DR. KHANDURI: Objection. Form, scope.

13 BY THE WITNESS:

14 A I see that bullet point listed on this
15 document.

16 BY MR. CHEUNG:

17 Q Do you agree that 10x identified as a
18 select key feature of the Xenium platform at
19 launch is that it has Xenium explorer interactive
20 visualization software?

21 DR. KHANDURI: Objection. Form, scope.

22 BY THE WITNESS:

1 A I see that bullet point listed here on
2 this page.

3 BY MR. CHEUNG:

4 Q Do you agree that 10x is marketing Xenium
5 by stating that it has class-leading speed and
6 throughput?

7 DR. KHANDURI: Objection. Form, scope.

8 BY THE WITNESS:

9 A I don't know that I would characterize
10 this document as a marketing document. This is
11 just an announcement of the launch of a new
12 product.

13 BY MR. CHEUNG:

14 Q Do you agree that 10x listed these five
15 select key features of the Xenium platform to
16 appeal to potential customers of Xenium?

17 DR. KHANDURI: Objection. Form, scope.

18 BY THE WITNESS:

19 A I think the audience of a press release is
20 broader than potential customers but I would agree
21 that they have listed these five bullet points in
22 the context of their announcement.

1 BY MR. CHEUNG:

2 Q Do you agree that 10x listed these five
3 select key features of the Xenium platform in
4 order to appeal to potential customers of
5 Xenium?

6 DR. KHANDURI: Objection. Form, scope.

7 BY THE WITNESS:

8 A Once again, we're talking about a press
9 release whose audience is broader than potential
10 customers, but, yes, eventually 10x is going
11 to want its product to appeal to potential
12 customers.

13 BY MR. CHEUNG:

14 Q Are these five listed select key features
15 of the Xenium platform what separates Xenium from
16 its competitor products?

17 DR. KHANDURI: Objection. Form, scope.

18 BY THE WITNESS:

19 A I don't have an opinion on that.

20 BY MR. CHEUNG:

21 Q Do you have an opinion on whether Xenium
22 having a class-leading speed and throughput is a

1 driver for customer demand?

2 DR. KHANDURI: Objection. Form, scope.

3 BY THE WITNESS:

4 A I do not.

5 BY MR. CHEUNG:

6 Q Do you have an opinion on whether Xenium
7 having a broad menu of gene panels is a driver for
8 customer demand?

9 DR. KHANDURI: Objection. Form, scope.

10 BY THE WITNESS:

11 A I do not.

12 BY MR. CHEUNG:

13 Q Do you have an opinion on whether Xenium
14 being compatible with standard pathology including
15 H&E is a driver for customer demand?

16 DR. KHANDURI: Objection. Form, scope.

17 BY THE WITNESS:

18 A I do not.

19 BY MR. CHEUNG:

20 Q Do you have an opinion on whether Xenium
21 being be able to perform comprehensive onboard
22 analysis is a driver for customer demand?

1 DR. KHANDURI: Objection. Form, scope.

2 BY THE WITNESS:

3 A I do not.

4 BY MR. CHEUNG:

5 Q Do you have any opinion on whether the
6 Xenium platform including the Xenium Explorer
7 interactive visualization software is a driver for
8 customer demand?

9 DR. KHANDURI: Objection. Form, scope.

10 BY THE WITNESS:

11 A I do not.

12 BY MR. CHEUNG:

13 Q Do you know whether class-leading speed
14 and throughput is a unique characteristic of the
15 '554 patent claims?

16 DR. KHANDURI: Objection. Form, scope.

17 BY THE WITNESS:

18 A I do not.

19 BY MR. CHEUNG:

20 Q Do you know whether a broad menu of gene
21 panels is a unique characteristic of the '554
22 patent claims?

1 DR. KHANDURI: Objection. Form, scope.

2 BY THE WITNESS:

3 A I do not.

4 BY MR. CHEUNG:

5 Q Do you know whether compatibility with
6 standard pathology including H&E is a unique
7 characteristic of the '554 patents claims?

8 DR. KHANDURI: Objection. Form, scope.

9 BY THE WITNESS:

10 A I do not.

11 BY MR. CHEUNG:

12 Q Do you know whether comprehensive onboard
13 analysis is a unique characteristic of the '554
14 patent claims?

15 DR. KHANDURI: Objection. Form, scope.

16 BY THE WITNESS:

17 A I do not.

18 BY MR. CHEUNG:

19 Q Do you know whether the Xenium Explorer
20 interactive visualization software is a unique
21 characteristic of the '554 patent claims?

22 DR. KHANDURI: Objection. Form, scope.

1 BY THE WITNESS:

2 A I do not.

3 BY MR. CHEUNG:

4 Q Ms. Davis, if you can bring up
5 Exhibit 1081. Let me know when you have it
6 open.

7 A I have that open.

8 Q Do you see that this exhibit is a document
9 that discusses Xenium?

10 A It appears to, yes.

11 Q I'm going to direct you to the top of the
12 second page of the PDF.

13 Do you see that the first sentence talks
14 about Xenium using DAPI nuclear stain as the
15 tissue morphology marker to inform on platform
16 segmentation of individual cell borders? Do you
17 see that?

18 A I see those words.

19 Q Is this a feature that drives customer
20 demand?

21 DR. KHANDURI: Objection. Form, scope.

22 BY THE WITNESS:

1 A I don't have a view on that.

2 BY MR. CHEUNG:

3 Q This a unique feature of the claims of the
4 '554 patent?

5 A I don't know.

6 Q Do you see the next phrase in the sentence
7 which states: "The data can be reprocessed using
8 third party segmentation tools."

9 Do you see that?

10 A I see those words.

11 Q Do you know whether data that can be
12 reprocessed using third party segmentation tools
13 is a feature that drives customer demand?

14 DR. KHANDURI: Objection. Form, scope.

15 BY THE WITNESS:

16 A I do not have a view on that.

17 BY MR. CHEUNG:

18 Q Do you know whether data that can be
19 reprocessed using third party segmentation tools
20 is a unique feature of the '554 patent claims?

21 DR. KHANDURI: Objection. Form, scope.

22 BY THE WITNESS:

1 A I do not. That's outside my expertise.

2 BY MR. CHEUNG:

3 Q Do you see the next sentence on this page
4 which states: "The number of targets is currently
5 limited to approximately 500 genes though future
6 panels are promised at 1,000 or 5,000-plex and
7 will also allow simultaneous profiling of protein
8 expression targets as well".

9 Do you see that sentence?

10 A I see that sentence.

11 Q Do you know whether seen Xenium being able
12 to perform 500-plex is a feature that drives
13 customer demand?

14 DR. KHANDURI: Objection. Form, scope.

15 BY THE WITNESS:

16 A I do not.

17 BY MR. CHEUNG:

18 Q Do you know whether being able to perform
19 500 plex is a feature of the '554 patent?

20 DR. KHANDURI: Objection. Form, scope.

21 BY THE WITNESS:

22 A No. That is outside my expertise.

1 BY MR. CHEUNG:

2 Q Do you know whether Xenium being able to
3 perform simultaneous profiling of protein express
4 targets is a feature that drives customer demand?

5 DR. KHANDURI: Objection. Form, scope.

6 BY THE WITNESS:

7 A I do not.

8 BY MR. CHEUNG:

9 Q Do you know whether the simultaneous
10 profiling of protein expression targets is a
11 feature of the '554 patent claims?

12 DR. KHANDURI: Objection. Form, scope.

13 BY THE WITNESS:

14 A I do not. That is outside my expertise.

15 BY MR. CHEUNG:

16 Q I'm going to direct you to the next
17 sentence, do you see that states: "Data is easily
18 viewable with provided desktop tools and
19 compatible with a rapidly developing array of
20 downstream third party analysis tools".

21 Do you see that?

22 A I see those words.

1 Q Do you know whether data that is easily
2 viewable and compatible with a rapidly developing
3 array of downstream third party analysis tools is
4 a feature that drives customer demand?

5 DR. KHANDURI: Objection. Form, scope.

6 BY THE WITNESS:

7 A I do not.

8 BY MR. CHEUNG:

9 Q Do you know whether having data that's
10 easily viewable and is compatible with a rapidly
11 developing array of downstream third party
12 analysis tools is a feature of the '554 patent
13 claims?

14 DR. KHANDURI: Objection. Form, scope.

15 BY THE WITNESS:

16 A No, that is outside my expertise.

17 BY MR. CHEUNG:

18 Q I'm going to direct you to the next
19 section after the image on the same page which
20 starts with: Key features.

21 Do you see that?

22 A I do.

1 Q Do you understand that that this is
2 promoting the key feature of Xenium having single
3 cell resolution, right?

4 DR. KHANDURI: Objection. Form.

5 BY THE WITNESS:

6 A I would agree that the document shows a
7 bullet point called single cell resolution as a
8 key feature. I do not know that this would be
9 characterized as promoting that since this does
10 not appear to be a document coming from 10x.

11 BY MR. CHEUNG:

12 Q You agree that a key feature of Xenium is
13 that it has single cell resolution, right?

14 DR. KHANDURI: Objection. Form.

15 BY THE WITNESS:

16 A I see that this document identifies single
17 cell resolution as a key feature.

18 BY MR. CHEUNG:

19 Q Do you agree that sensitive and accurate
20 chemistry is a key feature of Xenium?

21 DR. KHANDURI: Objection. Form.

22 BY THE WITNESS:

1 A I agree that this document lists sensitive
2 and accurate chemistry as a key feature.

3 BY MR. CHEUNG:

4 Q Do you agree that speed is a key feature
5 of Xenium?

6 DR. KHANDURI: Objection. Form, scope.

7 BY THE WITNESS:

8 A I agree are that this document shows a
9 bullet point labeled speed as a key feature of the
10 Xenium product.

11 BY MR. CHEUNG:

12 Q Do you know whether a single cell
13 resolution is a Xenium feature that drives
14 customer demand?

15 DR. KHANDURI: Objection. Form, scope.

16 BY THE WITNESS:

17 A I do not.

18 BY MR. CHEUNG:

19 Q Do you know whether having single cell
20 resolution is a feature of the '554 patent
21 claims?

22 DR. KHANDURI: Objection. Form, scope.

1 BY THE WITNESS:

2 A I do not. That is outside my expertise.

3 BY MR. CHEUNG:

4 Q Do you know whether sensitive and accurate
5 chemistry is a Xenium feature that drives customer
6 demand?

7 DR. KHANDURI: Objection. Form, scope.

8 BY THE WITNESS:

9 A I do not.

10 BY MR. CHEUNG:

11 Q Do you know whether sensitive and
12 accurate chemistry is a feature of the '554 patent
13 claims?

14 DR. KHANDURI: Objection. Form, scope.

15 BY THE WITNESS:

16 A No, that is outside my expertise.

17 BY MR. CHEUNG:

18 Q Do you know whether speed is a Xenium
19 feature that drives customer demand?

20 DR. KHANDURI: Objection. Form, scope.

21 BY THE WITNESS:

22 A I do not.

1 BY MR. CHEUNG:

2 Q Do you know whether speed is a feature of
3 the '554 patent claims?

4 DR. KHANDURI: Objection. Form, scope.

5 BY THE WITNESS:

6 A No, that is outside my expertise.

7 BY MR. CHEUNG:

8 Q I'm going to direct you to the next page,
9 so Page 3 of Exhibit 1081. And do you see the
10 last sentence before the figure on this page which
11 states: "Resulting data is immediately viewable
12 and is compatible with an easy-to-use data viewer
13 and with many third party downstream analysis
14 tools which continue to rapidly develop".

15 Do you see that?

16 A Yes, I see that sentence.

17 Q Do you know whether Xenium having
18 resulting data that is immediately viewable is a
19 feature that drives customer demand?

20 DR. KHANDURI: Objection. Form, scope.

21 BY THE WITNESS:

22 A I do not.

1 BY MR. CHEUNG:

2 Q Do you know whether having resulting data
3 that is immediately viewable is a feature of the
4 claims of the '554 patent?

5 DR. KHANDURI: Objection. Form, scope.

6 BY THE WITNESS:

7 A No. That is outside my expertise.

8 BY MR. CHEUNG:

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
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22 [REDACTED]

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13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 MR. CHEUNG: No further questions. I pass
22 the witness.

1 DR. KHANDURI: Let's take a half an hour
2 break.

3 MR. CHEUNG: Sure.

4 (A recess was had.)

5 DR. KHANDURI: So before we go on, I just
6 want to make sure that we mark this transcript
7 confidential, protective order material.

8 And I also want to make sure that you send
9 this transcript rough or final version only to the
10 folks who are of counsel or of record so only the
11 Weil team and Sterne Kessler, nobody else. Just
12 making sure it doesn't go somewhere else.

13 EXAMINATION

14 BY DR. KHANDURI:

15 Q Julie, we have a few questions for you.

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
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6 [REDACTED]
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[REDACTED]

DR. KHANDURI: Thank you. I have no further questions. I'll pass the witness.

MR. CHEUNG: We're done.

DR. KHANDURI: Great. Thank you.

(Deposition concluded at 3:04 p.m. CST).

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

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

5 That Julie L. Davis, the witness whose
6 deposition is hereinbefore set forth,

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

11 I further certify that the adverse
12 party, petitioner was represented by counsel at
13 the deposition.

14 I further certify that the deposition of
15 Julie L. Davis, occurred virtually on Wednesday,
16 February 26, 2025, commencing at 11:08 a.m. to
17 3:04 p.m. CST.

18 I further certify the inspection,
19 reading and signing of said deposition was
20 waived on the record by agreement of all parties.

21 I further certify that I am not related
22 to any of the parties to this action by blood

1 or marriage, I am not employed by or an attorney
2 to any of the parties to this action, and that I
3 am in no way interested, financially or otherwise,
4 in the outcome of this matter.

5 IN WITNESS WHEREOF, I have hereunto set
6 my hand this 6th day of March, 2025.

7
8 
9 _____

10 Theresa A. Vorkapic

11 My commission expires November 6, 2027.

12 NOTARY PUBLIC IN AND FOR THE
13 ILLINOIS

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