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Transcript of Robert J. Noecker, M.D.

Date: February 19, 2025

Case: Dr. Reddy's Laboratories, S.A., et al. -v- Eye Therapies, LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Robert J. Noecker, M.D.
Conducted on February 19, 2025

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UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE PATENT TRIAL AND APPEAL BOARD ----- DR. REDDY'S LABORATORIES S.A. and DR. REDDY'S LABORATORIES, INC., Petitioners, v. EYE THERAPIES, LLC, Patent Owner. ----- Case IPR2024-00563 U.S. Patent No. 11,596,600 Case IPR2024-00467 U.S. Patent No. 11,833,245 ----- REMOTE VIDEOTAPED DEPOSITION of ROBERT J. NOECKER, M.D. Wednesday, February 19, 2025 3:57 p.m. CST Job No.: 569764 Pages: 1 - 131 Reported By: Michelle M. Yohler, CSR, RMR, CRR	A P P E A R A N C E S ON BEHALF OF THE PETITIONER: MR. ROBERT FREDERICKSON, III, ESQUIRE GOODWIN PROCTER, LLP 100 Northern Avenue Boston, Massachusetts 02201 617.570.1000 -and- MR. CHRISTOPHER J. CASSELLA, ESQUIRE GOODWIN PROCTER, LLP 1900 N Street NW Washington, D.C. 20036 202.346.4000	
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Videotaped deposition of ROBERT J. NOECKER, M.D., held remotely pursuant to notice before Michelle M. Yohler, CSR, RMR, CRR, a certified shorthand reporter, CSR No. 84-4531.	A P P E A R A N C E S C O N T I N U E D ON BEHALF OF THE PATENT OWNER: MR. BRYAN C. DINER, ESQUIRE MS. CHRISTINA JI-HYE YANG, ESQUIRE FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 New York Avenue, NW Washington, D.C. 20001-4413 202.408.4000 -and- DAVID WEINGARTEN, Ph.D., ESQUIRE FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 271 17th Street, NW Suite 1400 Atlanta, Georgia 30363-6209 404.653.6400 ALSO PRESENT: Mr. Jesse Castro, Technician Ms. Nache Buie, Videographer	

5 1 EXAMINATIONS 2 WITNESS PAGE 3 ROBERT J. NOECKER, M.D. 4 By Mr. Frederickson..... 7 5 6 7 EXHIBITS 8 EXHIBITS REFERENCED (NOT ATTACHED) PAGE 9 No. 1001 '245 Patent..... 14 10 No. 1006 Norden Reference..... 107 11 No. 2028 Fudenberg Reference..... 121 12 No. 2050 Lumify Labeling..... 76 13 No. 2223 Declaration of Robert J. Noecker, 14 M.D., MBA in IPR2024-00467 15 Patent No. 11, 833,245..... 11 16 17 18 19 20 21 22	7 1 MR. DINER: Bryan Diner on behalf of the 2 Patent Owner, Eye Therapies, LLC. With me is 3 Christina Yang and David Weingarten, also 4 representing Eye Therapies and also of the firm 5 Finnegan Henderson. 6 THE VIDEOGRAPHER: Thank you. 7 The court reporter today is Michelle 8 Yohler also representing Planet Depos. 9 The witness will now be sworn. 10 (WHEREUPON, the witness was duly sworn.) 11 ROBERT J. NOECKER, M.D., 12 called as a witness herein, having been first duly 13 sworn, was examined and testified as follows: 14 EXAMINATION 15 BY MR. FREDERICKSON: 16 Q Good afternoon, Dr. Noecker. 17 Do you understand that you are under oath 18 today? 19 A Yes. 20 Q And you've been deposed before; is that 21 right? 22 A Yes.
6 1 PROCEEDINGS 2 (Technician read-on.) 3 THE VIDEOGRAPHER: Here begins Media 4 Number 1 in the videotaped deposition of 5 Dr. Robert Noecker in the matter of Dr. Reddy's 6 Laboratories S.A., et al., versus Eye 7 Therapies, LLC, United States Patent and Trademark 8 Office before the Patent Trial and Appeal Board, 9 Case No. IPR2024-00467 and IPR2024-00563. 10 Today's date is February 19, 2025, and the 11 time on the video monitor is 3:57 p.m. Central 12 Standard Time. 13 The videographer today is Nache Buie 14 representing Planet Depos. 15 This video deposition is taking place 16 remotely. 17 Would counsel please voice-identify 18 themselves and state whom they represent. 19 MR. FREDERICKSON: Robert Frederickson 20 from Goodwin Procter representing the Petitioners 21 Dr. Reddy's Laboratory entities. Also on the line 22 is my colleague from Goodwin, Chris Cassella.	8 1 Q You've been deposed in both inter partes 2 review proceedings and the district court 3 litigation that involved Dr. Reddy's and the Eye 4 Therapies entities before; is that right? 5 A Yes. 6 Q Since we're doing this deposition 7 remotely, let me just ask, the computer that 8 you're using for the deposition, are there any 9 other programs open other than the Zoom and what 10 you need to interact with me on the video feed 11 here? 12 A I don't know. It's not my computer. 13 Q Okay. 14 MR. DINER: I can represent that the 15 answer is no. 16 MR. FREDERICKSON: Okay. Thank you. 17 MR. DINER: You're welcome. 18 BY MR. FREDERICKSON: 19 Q I also understand that you may have some 20 paper binders and materials with you; is that 21 correct? 22 A Yes.

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9 1 Q And can you just tell me on the record 2 what exactly you've brought with you to the 3 deposition, or you've been provided with? 4 A They're basically reports and exhibits in 5 relation to the case, my declaration. 6 Q So you have paper copies of the 7 declarations that you've submitted in the two 8 IPRs? 9 A That's correct. 10 Q And you have paper copies of at least some 11 of the exhibits that you refer to in those 12 declarations? 13 A Yes. 14 Q And are any of those pages marked or 15 highlighted or annotated in any way? 16 A No. 17 Q You submitted two declarations in two 18 separate IPR proceedings; is that right? 19 A Yes. 20 Q And you had previously submitted written 21 declarations in an IPR proceeding involving a 22 patent with the last three numbers '742; is that	11 1 A There are components, yes. 2 Q Okay. And so how much time did you spend 3 preparing the two declarations that you submitted 4 in these proceedings? 5 A A lot of time. 6 Q Can you quantify that for me? 7 A Not precisely. Tens of hours. 8 Q 10 hours, 20 hours, 50 hours? 9 A Something in that range, yes. 10 Q Somewhere between 10 to 50 hours? 11 A Yes, I think that's fair. 12 Q Can you get a copy of your declaration 13 from the -- involving the '245 patent. It's IPR 14 with the last three numbers 467. It's 15 Exhibit 2223. Do you have -- 16 A I have that. 17 (WHEREUPON, Exhibit No. 2223 was first 18 referenced.) 19 BY THE WITNESS: 20 A I have it. 21 BY MR. FREDERICKSON: 22 Q Okay. So you're looking at Exhibit 2223
10 1 right? 2 A Yes. 3 Q And you've previously submitted written 4 testimony in connection with district court 5 proceedings pending in the District of New Jersey; 6 is that right? 7 A Yes. 8 Q Can you tell me how -- the process by 9 which you prepared your declarations for the two 10 IPRs that are at issue in these proceedings? 11 A Sure. I mean, basically relied on 12 information from my experience. I worked with a 13 team of -- you know, to come up with a first 14 draft, and worked with counsel to, you know, edit 15 and add and subtract different parts of it, you 16 know, that are relevant to this -- these 17 proceedings. 18 Q And the declarations that you submitted in 19 the two IPR proceedings, those are based on, at 20 least in part, the declarations you had previously 21 submitted in the other IPR proceeding and the 22 district court litigation; is that right?	12 1 from the '245 patent IPR; is that right? 2 A Yes. 3 Q On Page 127, it's signed and dated by you 4 November 19, 2024; is that right? 5 A Yes. 6 Q Can you turn to Paragraph 62 of your 7 declaration. 8 A I'm there. 9 Q Okay. In Paragraph 62 of your 10 declaration, this is the beginning of a section on 11 claim construction involving the transitional 12 phrase "consisting of"; is that right? 13 A That's correct. 14 Q And in the second sentence of 15 Paragraph 62, you write: "I have also been 16 informed that when 'consisting of' is used in 17 conjunction with a claim term introduced with the 18 indefinite in the article ('a' or 'an'), that term 19 is limited to its singular sense." 20 Do you see that? 21 A Yes. 22 Q That understanding that was communicated

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13 1 to you, was that communicated to you by the 2 attorneys? 3 A Yes. 4 Q And what did you understand it to mean 5 when you were informed that the term is limited to 6 its singular sense? 7 MR. DINER: Objection. Vague. 8 BY THE WITNESS: 9 A Could you rephrase the question? 10 BY MR. FREDERICKSON: 11 Q Sure. When you were informed that 12 "consisting of" is used in conjunction with the 13 claim term introduced with the indefinite article 14 "a" or "an," what did you understand it to mean 15 that the term is limited to its singular sense? 16 A That "a" or "an" means one. 17 Q That "a" or "an" means one and no more 18 than one? 19 A It means one. 20 Q Now, following that sentence, you write: 21 "Based on this understanding." 22 Do you see that?	15 1 BY THE WITNESS: 2 A Okay. 3 BY MR. FREDERICKSON: 4 Q And so the phrase that you quoted, 5 "consisting of topically administering to an eye a 6 composition in the form of an ocular drop" appears 7 in claim 1 of the '245 patent; is that right? 8 A Those words do, yes. 9 Q Now, there are three indefinite articles 10 that appear following the "consisting of" in that 11 phrase; is that right? 12 MR. DINER: Objection. Vague. 13 BY THE WITNESS: 14 A Could you be more specific? 15 BY MR. FREDERICKSON: 16 Q Okay. You bolded the phrase "consisting 17 of"; do you see that? 18 A Yes. 19 Q Okay. And then following that "consisting 20 of" there is a reference to "an eye," correct? 21 A Yes. 22 Q There is a reference to "a composition,"
14 1 A Yes. 2 Q And then you write: "In my opinion, the 3 phrase 'consisting of topically administering to 4 an eye...a composition in the form of an ocular 5 drop consisting of 0.025 percent weight by volume 6 brimonidine as the sole active ingredient' limits 7 the claimed method to ocularly topically 8 administering a single drop of 0.025 percent 9 brimonidine as the only active ingredient in a 10 single step..." 11 Do you see that? 12 A Yes. 13 Q You recognize that the quotation that 14 begins "consisting of" and ending at "as the sole 15 acting ingredient" comes from claim 1 of the '245 16 patent? 17 A We can look at it directly, but it's 18 consistent with that, that's for sure. 19 Q Well, you want to go ahead and take a look 20 at the '245 patent. It's Exhibit 1001. 21 (WHEREUPON, Exhibit No. 1001 was first 22 referenced.)	16 1 correct? 2 A Yes. 3 Q And there is a reference to "an ocular 4 drop"; is that right? 5 A Yes. 6 Q Do you understand that the use of 7 "consisting of topically administering to an eye" 8 limits claim 1 to the administration of the 9 0.025 percent brimonidine to only one eye? 10 A Yeah, I mean, that's how the treatment's 11 applied, to one eye, yes. 12 Q So if a patient administers 0.025 percent 13 brimonidine to both eyes, then he or she is not 14 practicing the claimed method, right? 15 MR. DINER: Objection. Calls for a legal 16 conclusion. 17 BY THE WITNESS: 18 A No, that's not what we're saying. I mean, 19 an eye is an eye, right? One eye is treated when 20 we do any treatment. 21 BY MR. FREDERICKSON: 22 Q Okay. And so your understanding of the

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17 1 reference to "an eye" can include a situation when 2 that brimonidine is being administered to both 3 eyes? 4 MR. DINER: Objection. Mischaracterizes 5 his prior testimony. 6 BY THE WITNESS: 7 A No, I think -- I think you're muddling 8 what I said. I mean, the treatment -- you know, 9 in our world, like, an eye is kind of like a 10 patient. So you'd have to -- it would depend on 11 the clinical scenario whether indeed in that 12 person you wanted to treat one or both eyes. 13 But the act of treating, we're always 14 treating one eye. 15 BY MR. FREDERICKSON: 16 Q And the act of treating, you can only 17 administer one drop of an ocular drop at a time, 18 right? 19 A We're administering one drop to a given 20 eye. 21 Q Right. So "an eye" is not limited to one 22 and only eye in claim 1 of '245 patent; is that	19 1 picture, but at that moment, we're treating an 2 eye. 3 BY MR. FREDERICKSON: 4 Q But when it comes to a condition like eye 5 redness or ocular hyperemia, that can manifest in 6 both eyes at the same time, right? 7 A Well, that -- in a person, but we're 8 talking about that eye. 9 Q And so when a person has ocular hyperemia 10 in both eyes, that person may administer 11 brimonidine at 0.025 percent to both eyes? 12 MR. DINER: Objection. Vague. 13 BY THE WITNESS: 14 A It's a bit -- your confessions -- your 15 questions are a bit confusing to me. I don't know 16 if you could re -- they're not consistent, I don't 17 think, with what I'm saying. I think we might be 18 talking, like, past one another here. 19 BY MR. FREDERICKSON: 20 Q When you see the phrase "an eye" in 21 claim 1 of the '245 patent, is that being used in 22 its singular sense?
18 1 your understanding? 2 MR. DINER: Objection. Mischaracterizes 3 his testimony. Calls for a legal conclusion. 4 BY THE WITNESS: 5 A I mean, what we're -- we're talking about 6 is, you know, any given -- any given treatment in 7 our world in ophthalmology is when you're 8 treating, we're always treating an eye. 9 BY MR. FREDERICKSON: 10 Q In some circumstances, you're treating 11 both eyes, right? 12 MR. DINER: Objection. Incomplete 13 hypothetical. Vague. 14 BY THE WITNESS: 15 A Well, I mean, in a person, but that's -- 16 that's going beyond. I mean, we're really 17 always -- like, the eye in -- for, like, say, 18 cardiology, there's only one heart in a whole 19 person, right? People have two eyes. So we're 20 treating an eye. 21 When I do surgery, I'm treating that 22 eyeball. That happens to be part of a bigger	20 1 A Yes, it's an eye. 2 Q And so the claim requires and is limited 3 to topically administering to one eye a 4 composition in the form of an ocular drop 5 consisting of 0.025 percent weight by volume of 6 brimonidine? 7 MR. DINER: Objection. Vague. Calls for 8 a legal conclusion. 9 BY THE WITNESS: 10 A I mean, in ophthalmology, we're 11 always -- we're always treating an eye. That's 12 our -- that's our patient. So whatever a given 13 treatment might be, that's what we're treating, an 14 eye. 15 BY MR. FREDERICKSON: 16 Q Is that how you understand, based on 17 instruction you received about the meaning of the 18 phrase "consisting of" that claim 1 operates, that 19 an eye in the claim is one eye? 20 MR. DINER: Objection. Vague. 21 BY THE WITNESS: 22 A I mean, my -- like, I -- I'm trying to

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21 1 explain my understanding, which, once again, that 2 eye is what we're treating no matter what we're 3 doing. It's always one eye. That's all we can 4 treat is one eye for anything. That's our patient 5 is treating that eye. 6 BY MR. FREDERICKSON: 7 Q Okay. And so is the claim 1 of the '245 8 patent based on your understanding of the legal 9 meaning of the phrase "consisting of" limited to 10 the treatment of one eye in a person? 11 MR. DINER: Calls for a legal conclusion. 12 Asked and answered. 13 BY THE WITNESS: 14 A I mean, maybe you could rephrase that a 15 different way or give me an example of what -- I'm 16 not sure what's -- I mean, that's my understanding 17 of how we treat, we treat one eye at a time. 18 BY MR. FREDERICKSON: 19 Q Are there drug compositions that can be 20 topically administered to an eye that are not in 21 the form of an ocular drop? 22 MR. DINER: Objection. Vague. Incomplete	23 1 antibiotic to an eye? 2 A You put it on the eyeball. 3 Q Are there other forms of medicines that 4 can be topically administered to an eye beyond 5 ointments and eyedrops? 6 MR. DINER: Objection. Vague. 7 BY THE WITNESS: 8 A Yeah, I'm not sure what you're asking. I 9 mean, in theory, you can put a lot of things on 10 the eye. 11 BY MR. FREDERICKSON: 12 Q Sure. But as a practicing 13 ophthalmologist, are there formulations of eye 14 medicines that are topically administered that 15 exist in a form other than eyedrops or eye 16 ointments? 17 MR. DINER: Vague. 18 BY THE WITNESS: 19 A Yeah, I mean, do you have any specific 20 examples? I mean, I'm not quite sure what 21 you're -- what you're -- it's unclear what you're 22 asking.
22 1 hypothetical. Calls for speculation. 2 BY THE WITNESS: 3 A I mean, so are you asking me do 4 non-eyedrop things exist? 5 BY MR. FREDERICKSON: 6 Q Sure. Let's start there -- 7 A (Inaudible) exist? 8 Q -- are there formulations for topically 9 administered eye medicines that are not ocular 10 drops? 11 A Such as an ointment? 12 Q Is an ointment a form of a topically 13 administered eye medicine that is different from a 14 ocular drop? 15 A It could be. 16 Q What is an ointment? 17 A Like erythromycin. 18 Q What's erythromycin? 19 A It's an antibiotic. 20 Q And how is that antibiotic used? 21 A In an ointment. 22 Q Is it used to topically administer the	24 1 BY MR. FREDERICKSON: 2 Q Are there eye creams that are topically 3 administered to eyes? 4 A Creams? I don't think so. 5 Q What about ocular gels; are there ocular 6 gels that topically administer active ingredients 7 to eyes? 8 A You're getting -- it's -- what you're 9 asking me, it's a little bit -- there's gel form 10 solutions that are administered as an eyedrop. I 11 mean, it's getting murky. I don't quite know how 12 to answer your questions. It's not cut and dry 13 a lot of times. 14 Q So what is your understanding of the 15 difference between an ocular gel and an ocular 16 drop? 17 MR. DINER: Objection. Vague. 18 BY THE WITNESS: 19 A It would depend where -- how you wanted to 20 define it. 21 BY MR. FREDERICKSON: 22 Q As a practicing ophthalmologist, do you

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25 1 have an understanding of the difference between an 2 eye medicine that is formulated as an ocular gel 3 versus an eye medicine that's formulated as an 4 ocular drop? 5 A It would -- that would depend is the 6 answer. You'd have to give me more specifics. 7 Q What is the difference between an ocular 8 ointment and an ocular gel? 9 MR. DINER: Objection. Vague. 10 BY THE WITNESS: 11 A Once again, it would depend on -- it would 12 depend. 13 BY MR. FREDERICKSON: 14 Q And what does it depend on? 15 A It would depend on the drug, the vehicle, 16 the packaging, app -- you know, the indications 17 for use. 18 Q How does the packaging inform the 19 difference between what is an ocular drop versus 20 what is an ocular ointment? 21 A It may affect how the manufacturer decides 22 to deliver it or optimal -- optimally delivered.	27 1 applied to the eye? 2 A Squirt it on there. 3 Q Would a person of ordinary skill in the 4 art in 2008 understand that ocular drops, ocular 5 gels, and ocular ointments are different forms of 6 compositions that can be used to topically deliver 7 medicines to an eye? 8 MR. DINER: Objection. Vague. Incomplete 9 hypothetical. 10 BY THE WITNESS: 11 A You have to give me more detail what you 12 mean by that. I mean, that by itself could be a 13 bunch of different things. 14 BY MR. FREDERICKSON: 15 Q So when claim 1 refers to a composition in 16 the form of an ocular drop, what did you 17 understand that to mean? 18 A That it's -- 19 MR. DINER: Objection to the extent it 20 calls for a legal conclusion. 21 BY THE WITNESS: 22 A That it's an eyedrop.
26 1 Q Are ocular ointments delivered in a method 2 that's different than an ocular drop? 3 MR. DINER: Objection. Vague. Incomplete 4 hypothetical. 5 BY THE WITNESS: 6 A I mean, you have to give me a specific 7 what you're -- what you mean. I mean, the answer 8 is: Depends. 9 BY MR. FREDERICKSON: 10 Q Okay. Can you give me an example of a 11 medicine that's delivered as an ocular ointment 12 that differs from how an ocular drop is 13 administered? 14 MR. DINER: Objection. Calls for 15 speculation. 16 BY THE WITNESS: 17 A I mean, I can -- like, for instance, 18 erythromycin, I can tell you it's in a tube like 19 toothpaste. I mean, I don't know if that answers 20 your question how it's administered but... 21 BY MR. FREDERICKSON: 22 Q And how is that tube like toothpaste	28 1 BY MR. FREDERICKSON: 2 Q And the language "a composition in the 3 form of an ocular drop," do you have an 4 understanding as to what that is intended to 5 differentiate? 6 MR. DINER: Objection. Vague. Asked and 7 answered. 8 BY THE WITNESS: 9 A I don't know what you mean. 10 BY MR. FREDERICKSON: 11 Q Do you understand that language to 12 differentiate a composition in the form of an 13 ocular ointment? 14 MR. DINER: Objection. Vague. Asked and 15 answered. 16 BY THE WITNESS: 17 A I mean, once again, I gave the example of 18 the ointment that comes out like toothpaste in a 19 tube versus an eyedrop. 20 BY MR. FREDERICKSON: 21 Q And you agree that those are two different 22 forms of compositions, right?

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29 1 A Two different forms of compositions? I -- 2 MR. DINER: Objection. Vague. 3 BY THE WITNESS: 4 A -- don't know what that means. 5 BY MR. FREDERICKSON: 6 Q Well, then what do you understand the 7 phrase "a composition in the form of" to refer to 8 in claim 1? 9 MR. DINER: Objection. Asked and 10 answered. Legal conclusion. 11 BY THE WITNESS: 12 A Well, that -- I mean, sentence or -- that 13 sentence is basically talking about eyedrops. 14 Q Right. And so what work does the word 15 "form" do in that phrase? 16 MR. DINER: Objection. Calls for a legal 17 conclusion. 18 BY THE WITNESS: 19 A I'm not a lawyer; I'm not exactly sure 20 what it means in the legal context. 21 BY MR. FREDERICKSON: 22 Q Okay. So in forming your opinions about	31 1 column 17 set off by the heading "Compositions," 2 and then it says "Formulations" in line 8; do you 3 see that? 4 A Yes. 5 Q And so do you understand that this is a 6 portion of the specification that talks about how 7 the inventive formula could be formulated? 8 A Well, it's just talking, I think, in 9 general how one might apply something to the eye. 10 Q And so ocular drops, ocular ointments, 11 gels, and creams are four different ways of 12 applying something to an eye? 13 MR. DINER: Objection. Mischaracterizes 14 the document. 15 BY THE WITNESS: 16 A It's just -- it's mentioning the ways or 17 possible -- even possible ways that you might 18 apply something to an eye. 19 BY MR. FREDERICKSON: 20 Q And would a person of ordinary skill in 21 the art understand what an ocular drop, an ocular 22 ointment, a gel, and a cream is?
30 1 claim construction, you didn't form any opinions 2 about what the phrase "in the form of" refers to 3 in claim 1? 4 A Basically the attention was put on that 5 you're administering an ocular -- an eyedrop. 6 Q Can you turn to column 17 of the '245 7 patent, lines 15 to 17, let's say. 8 Do you see the sentence: "The topical 9 compositions include, but are not limited to, 10 ocular drops, ocular ointments, gels, and creams"? 11 A Yes. 12 Q And so what would a person of ordinary 13 skill in the art understand the difference between 14 ocular drops, ocular ointments, gels, and creams 15 to be? 16 MR. DINER: Calls for a legal conclusion 17 and outside the scope of his deposition -- 18 declaration. 19 BY THE WITNESS: 20 A I'm not sure what you're asking me. 21 BY MR. FREDERICKSON: 22 Q You see that we're in a section in	32 1 A You'd have to be more specific. You'd 2 have to get more information. 3 Q Okay. So without more information, a 4 person of ordinary skill in the art wouldn't be 5 able to articulate differences between ocular 6 drops, ocular ointment, gels, and creams? 7 A It's the -- 8 MR. DINER: Objection. Mischaracterizes 9 prior testimony. 10 BY THE WITNESS: 11 A I mean, it would depend on the context 12 of -- that you're asking. 13 BY MR. FREDERICKSON: 14 Q What about just a general understanding; 15 would a person of ordinary skill in the art have 16 an understanding of how an ocular drop differs 17 from an ocular ointment? 18 MR. DINER: Objection. Vague. 19 BY THE WITNESS: 20 A I mean, you have -- 21 MR. DINER: Incomplete hypothetical. 22

33 1 BY THE WITNESS: 2 A You'd have to give more information 3 exactly what you're asking. 4 BY MR. FREDERICKSON: 5 Q Would a person of ordinary skill in the 6 art understand how an ocular drop differs from 7 ocular gels? 8 MR. DINER: Objection. Vague. 9 Incomplete -- 10 BY THE WITNESS: 11 A You'd have to give more information. 12 BY MR. FREDERICKSON: 13 Q Would a person of ordinary skill in the 14 art have an understanding of how ocular drops 15 differ from ocular creams? 16 A You'd -- 17 MR. DINER: Objection -- 18 BY THE WITNESS: 19 A -- have -- you'd have to give us more 20 information. 21 BY MR. FREDERICKSON: 22 Q Okay. In reviewing the '245 patent, did	35 1 A Those words are there, yes. 2 Q And so would a person of -- a person of 3 ordinary skill in the art understand those four 4 different words to refer to four different types 5 of topical compositions? 6 A It -- 7 MR. DINER: Objection. Mischaracterizes 8 the document. Vague. 9 BY THE WITNESS: 10 A I mean, you'd have to give more 11 information exactly what you were asking. 12 BY MR. FREDERICKSON: 13 Q What do you mean "you would have to give 14 more information"? 15 A You would have to give more information to 16 be able to draw distinctions between those. 17 Q And so what type of information would you 18 need to be able to draw distinctions between an 19 ocular drop, an ocular ointment, a gel, and a 20 cream? 21 A We'd have to know the physical 22 characteristics. We'd have to know how it's
34 1 you see more information about what the inventors 2 intended between the differences between ocular 3 drops, ocular ointment, gels, and creams to be? 4 MR. DINER: Objection. Calls for 5 speculation. 6 BY THE WITNESS: 7 A Yeah, I mean, the -- I mean, the inventors 8 may have meant a lot of things, but, you know, at 9 the end of the day, they talk about an eye -- 10 administering an eyedrop in the claims. 11 BY MR. FREDERICKSON: 12 Q And they distinguish an ocular drop from 13 an ocular ointment, a gel, and a cream in 14 column 17 of the '245 patent, right? 15 MR. DINER: Objection. Mischaracterizes 16 the document. Mischaracterizes his testimony. 17 BY THE WITNESS: 18 A I'm not sure I know what you mean by that. 19 BY MR. FREDERICKSON: 20 Q Well, they identify four different types 21 of topical compositions: Ocular drops, ocular 22 ointments, gels, and creams, right?	36 1 intended to be in clinically used, you know, the 2 formulations exactly, the active ingredients, the 3 packaging, once again. 4 Q Anything else? 5 A The top of my head, that's all I have. 6 Q So without a better understanding and more 7 information about the physical characteristics, 8 how it's to be used in clinical use, the active 9 ingredients, and the packaging, a person of 10 ordinary skill in the art would not be able to 11 distinguish between an ocular drop, ocular 12 ointment, gel, and cream? 13 MR. DINER: Objection. Mischaracterizes 14 prior testimony. Outside the scope. Incomplete 15 hypothetical. 16 BY THE WITNESS: 17 A Yeah, you have to give more. 18 BY MR. FREDERICKSON: 19 Q Turn to Paragraph 65 of your declaration, 20 Exhibit 2223 in the '245 patent IPR. 21 MR. DINER: I'm sorry. Can you repeat 22 that?

37 1 MR. FREDERICKSON: Paragraph 65. 2 MR. DINER: Okay. Thank you. 3 BY MR. FREDERICKSON: 4 Q Are you there? 5 A Yes. 6 Q In Paragraph 65, you identify certain 7 aspects and examples in the specification that you 8 claim further demonstrate administering a single 9 drop of brimonidine in a single step as a means 10 for reducing redness; is that right? 11 A Yes. 12 Q You identify examples 1, 4, 5, and 13 Figures 5A to C of all using a single drop of 14 low-dose brimonidine to reduce redness better than 15 prior art redness relievers, right? 16 A Yes. 17 Q Let's turn to example 1 in the '245 18 patent. It begins on column 20 towards the 19 middle. 20 Example 1 contains a series of figures 21 that show a comparison of the administration of a 22 low concentration of brimonidine in one eye and	39 1 Q And Figure 4B is brimonidine at 2 0.01 percent, right? 3 A Yes. 4 Q So none of the figures in example 1 5 involve a situation in which the eye received 6 0.025 percent brimonidine, right? 7 A Correct. 8 Q Okay. Now, Figure 4B shows a comparison 9 of two eyes 180 minutes after the administration 10 of tetrahydrozoline or brimonidine, right? 11 A Yes. 12 Q And then Figure 4C shows a comparison four 13 hours after the baseline in Exhibit -- Figure 4A, 14 right? 15 A Yes. 16 Q Figure 4D follows Figure 4C by showing the 17 two eyes a further four hours later, right? 18 A Yes. 19 Q Okay. So by Figure 4D, the right eye of 20 the person had received two drops of the prior art 21 redness relievers, and the left eye had received 22 two drops of brimonidine 0.02 percent; is that
38 1 the administration of a prior art redness reliever 2 in the other eye; is that right? 3 A Yes. 4 Q The first figure, 4A, shows the baseline 5 for both eyes. 6 Do you see that? 7 A Yes. 8 Q And would a person of ordinary skill in 9 the art understand that the baselines refer to 10 what the eyes looked like before any drug had been 11 administered? 12 A Yes. 13 Q And then Figures 4B, 4C, 4D, and 4E show 14 the effects of either a low concentration of 15 brimonidine or the prior art redness relievers; is 16 that right? 17 A Yes. 18 Q None of the examples in figures in 19 example 1 involve the administration of 20 0.025 percent brimonidine, do they? 21 A They talk about brimonidine at 22 0.02 percent, and here it mentions 0.33 percent.	40 1 right? 2 A What do you mean? 3 MR. DINER: Objection. Vague. 4 Mischaracterizes the document. 5 BY MR. FREDERICKSON: 6 Q So Figure 4C, the right eye receives 7 oxymetazoline 0.025 percent, right? 8 A Oxymetazoline. 9 Q And the left side receives brimonidine 10 0.02 percent, right? 11 A Yes. 12 Q Figure 4D, do you understand that to be an 13 illustration of the same eyes four hours later 14 from Figure 4C? 15 MR. DINER: Objection. Vague. Document 16 speaks for itself. 17 BY THE WITNESS: 18 A I mean, that's what it says. 19 BY MR. FREDERICKSON: 20 Q And in Figure 4D, four hours later, the 21 right eye had received naphazoline at 22 0.033 percent, right?

41 1 A That's what it states, yes. 2 Q The left eye was treated with brimonidine 3 at 0.02 percent, right? 4 A Yes. 5 Q And so by the time the patient and the 6 individual photographed in Figure 4D, the left eye 7 of that person had received one drop of 8 brimonidine four hours after baseline in Figure 4C 9 and one drop of brimonidine four hours later, 10 right? 11 MR. DINER: Objection. Mischaracterizes 12 the document. 13 BY THE WITNESS: 14 A Well, I don't -- I don't think you can 15 lump them together. I think they're -- you know, 16 they're different interventions. They happen to 17 be the same person it appears, the volume -- the 18 study volunteer, but they're discrete events. 19 BY MR. FREDERICKSON: 20 Q What do you mean "they're discrete 21 events"? 22 A They're, like, kind of -- they're doing	43 1 different things that happens to be -- it appears 2 to be, like, the same person was the study person. 3 Which, you know, there might have been 4 numerous motivations to use one person versus a 5 bunch of others, but they're -- they're 6 different -- they're different interventions. 7 BY MR. FREDERICKSON: 8 Q Can you explain to me how -- 9 A They're different experiments. 10 Q Can you explain to me how the same left 11 eye receiving the same concentration of the same 12 active ingredient, brimonidine, is two separate 13 interventions in example 1? 14 A Can you be more specific? 15 Q I don't think I can. You say that the 16 example in Figure 4C and 4D are two separate 17 interventions, right? 18 A Sure. 4C is a comparison with one eye 19 receiving oxymetazoline and the other eye 20 receiving brimonidine. That's, like, one 21 experiment to see what happened. 22 Q And then the same person in the same eye,
42 1 two different things. They're, like, two 2 different experiments. 3 Q Well, the left eye in the same person gets 4 the same drug twice, right? 5 A Okay. So they had one person being the 6 study participant. 7 Q So -- 8 A This is two different people. 9 MR. DINER: I'm going to object to that 10 question anyways to form and vagueness. 11 BY MR. FREDERICKSON: 12 Q So over the course of an eight-hour 13 period, the same left eye of the same person 14 received two drops of brimonidine; is that 15 factually accurate? 16 MR. DINER: Objection. Mischaracterizes 17 the document. 18 BY THE WITNESS: 19 A I mean, they're talking about two 20 different events. I don't think you can -- you 21 can -- well, you can't look at it that way, right? 22 They're two different interventions; they did two	44 1 the left eye, that person also receives 2 0.02 percent of brimonidine, right? 3 MR. DINER: Objection. Mischaracterizes 4 the document. 5 BY THE WITNESS: 6 A But that was a different, like, 7 experiment. 8 BY MR. FREDERICKSON: 9 Q Fair enough. But you testified earlier 10 that when you're an ophthalmologist, you treat one 11 eye at a time, right? 12 MR. DINER: Objection to the extent it 13 mischaracterizes testimony. 14 BY THE WITNESS: 15 A I guess. I mean, I don't understand -- 16 sure. I mean, in -- yeah, when we're treating, we 17 treat the condition of one eye at a time, yes. 18 BY MR. FREDERICKSON: 19 Q And the eyeball doesn't know what the 20 other eyeball receives by way of active 21 ingredients, does it; one eyeball to the other? 22 A Huh?

45 1 MR. DINER: Objection. Vague. 2 BY THE WITNESS: 3 A I really don't understand that question. 4 BY MR. FREDERICKSON: 5 Q Okay. So the eye doesn't have an 6 understanding -- the patient's left eye, in 7 receiving brimonidine, does not have any 8 understanding or awareness of what the right eye 9 received in these two separate experiments, right? 10 MR. DINER: Objection. Vague. 11 BY THE WITNESS: 12 A Are you talking at a cerebral level? 13 BY MR. FREDERICKSON: 14 Q Yeah, let's start there. 15 A What do you mean by "understanding"? 16 Q Any understanding. There's no interaction 17 between the two eyes because you treat eyes 18 separately, right? 19 A I mean, you're getting -- you're getting, 20 I think, in some -- I can't answer that question 21 the way it's asked. It doesn't make medical 22 sense.	47 1 another experiment. They're a good study 2 participant. 3 I mean, many drugs we have approved on the 4 market, the same people approved them. So they're 5 good at following protocols and doing what you ask 6 them to do and tolerating interventions. But, you 7 know, these are different experiments. They're 8 asking different questions. 9 Q Well, what makes them different 10 experiments? 11 MR. DINER: Asked and answered. 12 BY THE WITNESS: 13 A I mean, you're testing different things. 14 BY MR. FREDERICKSON: 15 Q In one eye, the left eye, both instances 16 you're testing the same concentration of 17 brimonidine eyedrops, right? 18 MR. DINER: Objection. Mischaracterizes 19 the document. 20 BY THE WITNESS: 21 A The experiment is to make a comparison 22 between two different drugs. That's the whole
46 1 Q Okay. So the left eye in Figure 4C 2 receives 0.02 percent drop of brimonidine at hour 3 four after baseline and then receives a second 4 drop of 0.02 percent brimonidine four hours later; 5 is that correct? 6 A But they're two separate -- they're two 7 discrete studies or inter -- comparisons that are 8 being made. 9 Q The two -- 10 A It happens to be the same person. It 11 seems to be a wonderful volunteer. Like, probably 12 why they used them. I mean, who knows. 13 But they're separate -- they're separate 14 experiments to demonstrate separate things. 15 Q So even though the same eye received the 16 same concentration of brimonidine four hours 17 apart, you understand those to be two separate 18 administrations? 19 A Well, they're two -- they're two totally 20 separate things that happen to be occurring -- you 21 know, we -- we have this medicine in where you 22 have a volunteer where you may come back and do	48 1 reason for doing -- it's an experiment, to 2 demonstrate -- you know, to test a hypothesis. 3 BY MR. FREDERICKSON: 4 Q So what's the hypothesis being tested? 5 A Not sure. It says it here. You know, 6 I -- it's basically -- I guess the simplest way to 7 put it is a comparison between two active 8 ingredients. 9 Q One active ingredient being administered 10 in the left eye and one active ingredient being 11 administered in the right eye; is that right? 12 MR. DINER: Objection. Vague. 13 BY THE WITNESS: 14 A I mean, what do you mean? When and where 15 and why? 16 BY MR. FREDERICKSON: 17 Q Is that what -- 18 A Is -- I mean, is that the intent, to 19 compare active ingredients in left eyes only? 20 Or -- it doesn't make any sense what you're 21 asking. 22 Q What doesn't make sense?

49 1 A What you're asking. These are -- these 2 are experiments to compare -- it seems to be 3 relative efficacy of two active ingredients. 4 There's a -- they're a series of different 5 experiments. 6 Q You see in Figure 4E the effect of 7 brimonidine 0.033 percent was evaluated in the 8 left eye only four hours the effects shown in 9 Figure 4D? 10 MR. DINER: Objection to the extent it 11 mischaracterizes the document. 12 BY THE WITNESS: 13 A I mean, that's a different experiment. 14 BY MR. FREDERICKSON: 15 Q Do you understand that the experiment 16 shown in Figure 4E is illustrating the same left 17 eye of the same person that appears in Figure 4D 18 and Figure 4C? 19 A But these are different experiments. 20 These should be viewed as discrete events. 21 Q Can you answer my question, Dr. Noecker? 22 Would a person of ordinary skill in the art	51 1 BY THE WITNESS: 2 A These are separate experiments testing or 3 answering separate questions. 4 BY MR. FREDERICKSON: 5 Q Well, the rebound hyperemia manifests 6 itself, among other times, upon the frequent 7 installation of eyedrops, correct? 8 MR. DINER: Objection. Vague. 9 BY THE WITNESS: 10 A Maybe. 11 BY MR. FREDERICKSON: 12 Q Well, can you define rebound hyperemia for 13 me? 14 MR. DINER: Objection. Vague. 15 BY THE WITNESS: 16 A In what context? 17 BY MR. FREDERICKSON: 18 Q In the context of eye redness and eye 19 redness reducers. 20 MR. DINER: Still vague. 21 BY THE WITNESS: 22 A Could you be more specific?
50 1 understand that the left eye shown in Figure 4E is 2 the same left eye in the same person as in 3 Figure 4D and Figure 4C? 4 MR. DINER: Objection. 5 Mischaracterizes -- 6 BY THE WITNESS: 7 A They would understand that these are a 8 series of events that happen to be formed -- 9 performed in the same person. 10 BY MR. FREDERICKSON: 11 Q And in Figure 4E, the specification refers 12 to showing the third application to be without 13 rebound hyperemia. 14 Do you see that? 15 A I see those words, yes. 16 Q And so you understand that one of the 17 hypotheses being tested in this example is whether 18 rebound hyperemia would show up upon multiple 19 administrations of brimonidine in the same eye? 20 MR. DINER: Objection. Document speaks 21 for itself. 22	52 1 BY MR. FREDERICKSON: 2 Q Sure. In example 1 what do you understand 3 the reference of rebound hyperemia to be? 4 A In this particular experiment, they showed 5 that it didn't have any -- that it didn't exist. 6 Q Can you define what that is? What is 7 rebound hyperemia in this example as it would be 8 understood to a person of ordinary skill in the 9 art? 10 A I mean, in this application, it's 11 difficult to tell from the pictures -- right? -- 12 but it's basically -- it's basically seeing if 13 there's an engorgement of the blood vessels. 14 Q After the same eye received three drops of 15 brimonidine over a 12-hour period of time, 16 correct? 17 MR. DINER: Objection to the extent it 18 mischaracterizes the document. 19 BY THE WITNESS: 20 A Once again, these are discrete 21 experiments. I'll use that word. 22

53 1 BY MR. FREDERICKSON: 2 Q What makes them discrete experiments? 3 A That you're testing different things. 4 Q Who is -- 5 A Different clinical -- the investigators. 6 Q So it's the intent of the investigator 7 that defines whether or not the administration of 8 an eyedrop is a discrete event? 9 MR. DINER: Objection. Mischaracterizes 10 his prior testimony. 11 BY THE WITNESS: 12 A I'm not sure what you're asking. I'm just 13 answering specifically to this example. 14 BY MR. FREDERICKSON: 15 Q Okay. In this example, what makes the 16 three administrations of brimonidine to the same 17 eye in a 12-hour period of time discrete events? 18 MR. DINER: Objection. Asked and 19 answered. 20 BY THE WITNESS: 21 A As I said before, we're testing different 22 things.	55 1 BY MR. FREDERICKSON: 2 Q And is it factually correct that in these 3 three discrete experiments, the same eye of the 4 same person received at least three drops of 5 brimonidine over a 12-hour period of time? 6 MR. DINER: The document speaks for 7 itself. 8 BY THE WITNESS: 9 A The experiments were designed to, you 10 know, look at these relatively shorter-term 11 effects. 12 BY MR. FREDERICKSON: 13 Q Okay. I don't think that answered my 14 question. 15 Is it factually correct that the same eye 16 of the same person received at least three drops 17 of brimonidine over a 12-hour period of time in 18 example 1? 19 A The same person -- the series of 20 experiments happened to be performed on the same 21 person. 22 Q Within a 12-hour period of time?
54 1 BY MR. FREDERICKSON: 2 Q And so because the investigator is testing 3 different things in Figures 4C, 4D, and 4E, you 4 interpret them to be discrete events; is that 5 correct? 6 MR. DINER: Objection to the extent it 7 mischaracterizes prior testimony. 8 BY THE WITNESS: 9 A They're different experiments comparing 10 different agents. 11 BY MR. FREDERICKSON: 12 Q But you'll agree with me that, by the time 13 we get to Figure 4E, the same eye of the same 14 patient received at least three drops of 15 brimonidine over a 12-hour period of time? 16 MR. DINER: Objection. Document speaks 17 for itself. 18 BY THE WITNESS: 19 A Once again, you have -- you have to look 20 at these as discrete experiments that happen to be 21 performed in the same person. 22	56 1 A I mean, you have to view -- I would -- I 2 view these in its -- I think any person of skill 3 in the art would review these as discrete 4 independent experiments that happen to be 5 performed in the same person. 6 Q Would a person of ordinary skill in the 7 art have understood that the experiment 4C, 8 experiment 4D, and experiment 4E occurred within a 9 12-hour period of time? 10 A I think what you take away is that they 11 were -- you -- independent events, independent 12 experiments. 13 Q Right. And these three independent events 14 described in figures 4C, 4D, and 4E all occurred 15 within a 12-hour period of time; is that how you 16 read this, Dr. Noecker? 17 A I would read that these are discrete 18 independent experiments with different end points 19 and interventions, et cetera. 20 Q You also point to example 4, which is on 21 column 21. Can you turn to example 4. 22 A Okay.

57 1 Q Example 4 involves the administration of 2 0.018 percent brimonidine; is that correct? 3 A Yes. 4 Q Okay. And there's no discussion in 5 example 4 of the administration of 0.025 percent 6 brimonidine; is that right? 7 A It doesn't say that. 8 Q You also point to example 5, which 9 involves the administration of 0.015 percent 10 brimonidine; is that right? 11 A That's what was in that example. 12 Q Okay. And that example says the treatment 13 was through drops twice a day for three to five 14 weeks. 15 Do you see that? 16 A Yes. 17 Q What is it in the description of example 5 18 that leads you to conclude that that example 19 involved the administration of only a single drop 20 of brimonidine? 21 A It was treated with brimonidine at that 22 concentration at that dose.	59 1 BY THE WITNESS: 2 A I don't -- 3 MR. DINER: Calls for speculation -- 4 BY THE WITNESS: 5 A I don't understand what -- I don't 6 understand quite what you're asking. 7 BY MR. FREDERICKSON: 8 Q There are circumstances in clinical 9 practice where an ophthalmologist will administer 10 more than one drop of the same drug in an eye; is 11 that right? 12 MR. DINER: Objection. Vague. Incomplete 13 hypothetical. 14 BY THE WITNESS: 15 A You'd have to give me the clinical 16 scenario where you might do that. 17 BY MR. FREDERICKSON: 18 Q And so what is it about the description of 19 example 5 when it says the treatment was through 20 drops twice a day, and "drops" is plural, that you 21 conclude that it was only a single drop at the 22 time of administration?
58 1 Q Okay. But where does the description of 2 example 5 say a single drop was used? 3 A The words "single drop" do not appear 4 there. 5 Q And so what causes you to interpret 6 example 5 to involve the administration of a 7 single drop of low-dose brimonidine? 8 A Because that's what we -- is consistent in 9 clinical practice; one drop is what fits in the 10 eye. 11 Q Well, it's impossible to administer two 12 drops to an eye simultaneously, isn't it? 13 MR. DINER: Objection. Vague. 14 BY THE WITNESS: 15 A I mean, I don't quite know what you mean 16 by "simultaneously." 17 BY MR. FREDERICKSON: 18 Q The typical clinical practice when 19 administering eyedrops to an eye is to 20 sequentially apply those drops, right? 21 MR. DINER: Objection -- 22	60 1 A Because -- 2 MR. DINER: Asked and answered. 3 BY THE WITNESS: 4 A Because that's all that would fit in the 5 eye. 6 BY MR. FREDERICKSON: 7 Q What do you mean "that's all that would 8 fit in an eye"? 9 A One eyedrop. 10 Q But that's also true when we talk about 11 prior art like Gil and Norden, that only one 12 eyedrop fits in an eye at a time, right? 13 MR. DINER: Objection. Vague. 14 BY THE WITNESS: 15 A I'm not sure what you're asking here. 16 BY MR. FREDERICKSON: 17 Q Well, can you explain to me what you mean 18 when you say "only one eyedrop fits in an eye at a 19 time"? 20 A There's a given standard -- relatively 21 standard volume of eyedrops, and there's only so 22 much space to put an eyedrop in.

61 1 Q Because if you put more than the space 2 will accommodate, the eyedrop will leak out of the 3 eye; is that right? 4 A There's only so much space to put an 5 eyedrop in, yes. 6 Q But how do you know in example 5 the 7 investigator did not apply one eyedrop of 8 brimonidine, wait a couple minutes, and apply a 9 second eyedrop of brimonidine at the 0.015 percent 10 concentration? 11 A Why would I think that? There's -- 12 Q So -- 13 A -- nothing to make me think that. 14 Q Okay. But there's also nothing to make 15 you think that there was just a single 16 administration of a single drop of brimonidine at 17 a time, right? 18 MR. DINER: Objection. Mischaracterizes 19 testimony. Asked and answered. 20 BY THE WITNESS: 21 A Yeah, I think I answered that question 22 already.	63 1 A I -- 2 MR. DINER: Objection. Vague. 3 Speculation. Incomplete hypothetical. 4 BY THE WITNESS: 5 A I mean, I think I already answered the 6 question. 7 BY MR. FREDERICKSON: 8 Q Can you answer it again then, please? 9 A That one drop, I mean, as a person of 10 skill in the art, we understand that's what -- all 11 that's going to fit. You put one drop, and that's 12 it. 13 Q And so if there's a situation where the 14 investigator places one drop, waits for that drop 15 to be absorbed, and places another drop, all part 16 of the same dosing, is that one or two drops being 17 administered? 18 MR. DINER: Objection. Assumes facts not 19 in evidence. Incomplete hypothetical. Vague. 20 BY THE WITNESS: 21 A I don't know what that clinical scenario 22 would be. You'd have to be more explicit.
62 1 BY MR. FREDERICKSON: 2 Q Do you -- if example 5 involved the 3 administration of a single drop of 0.015 percent 4 brimonidine, waiting a couple minutes, and 5 applying a second drop of 0.015 percent 6 brimonidine, would you still maintain that that's 7 an example that shows the use of a single drop of 8 low-dose brimonidine to reduce redness? 9 MR. DINER: Objection. Vague. Incomplete 10 hypothetical. 11 BY THE WITNESS: 12 A Yeah, I don't understand why that would 13 be. 14 BY MR. FREDERICKSON: 15 Q You don't understand why what would be? 16 A Why -- number one, why that would even -- 17 I guess I don't understand the hypothetical 18 because I don't know why you would do that. 19 Q You don't understand why an investigator 20 would administer one or two drops of an eye 21 redness reducer in the same step of 22 administration?	64 1 BY MR. FREDERICKSON: 2 Q So you don't have an understanding from a 3 clinical perspective of under what circumstances 4 an investigator in evaluating eye redness reducing 5 agents would administer more than one drop in a 6 couple-minute period of time? 7 MR. DINER: Objection. Mischaracterizes 8 testimony. 9 BY THE WITNESS: 10 A I think I answered that question. 11 BY MR. FREDERICKSON: 12 Q Is it that you don't know a clinical 13 circumstance that would involve the administration 14 of two drops of an eye redness reducer spread out 15 over a period of several minutes? 16 MR. DINER: Objection. Mischaracterizes 17 prior testimony. 18 BY THE WITNESS: 19 A I -- you're asking vague things. What do 20 you mean by several minutes? 21 BY MR. FREDERICKSON: 22 Q Within five minutes.

65 1 MR. DINER: Incomplete hypothetical. 2 BY THE WITNESS: 3 A Why would you do that? 4 BY MR. FREDERICKSON: 5 Q So you're not aware of any circumstance 6 where an investigator evaluating eye redness 7 reducing drops would wait and administer two drops 8 over a period of time of five minutes? 9 A I think to evaluate completely you'd have 10 to -- I'd have to see the specific clinical 11 situation. 12 Q What about an investigator that 13 administers two drops sequentially right after 14 another; would that be a circumstance that you've 15 encountered in clinical practice for the 16 evaluation of redness-reducing eyedrops? 17 A What do you mean "sequentially"? 18 Q One drop immediately after another. 19 A Why would you do that? Only one can fit. 20 Q So, in your experience, people that 21 administer eyedrops do not administer two drops 22 sequentially at a time?	67 1 BY MR. FREDERICKSON: 2 Q You also point to Figures 5A through C 3 which are described in column 20. Can you take a 4 look at that. 5 In the textual descriptions of Figures 5A 6 through C, it discusses the administration of 7 brimonidine at concentration of 0.015 percent, 8 right? 9 MR. DINER: Can you show us where you're 10 pointing to -- 11 BY THE WITNESS: 12 A Is that -- is that line 18? 13 BY MR. FREDERICKSON: 14 Q Line 18, line 21, and line 26. 15 A Okay. Yes. 16 Q So Figures 5A through C involve the 17 administration of 0.015 percent brimonidine, 18 right? 19 A Yes. 20 Q There's no discussion in Figures 5A 21 through C of the administration of 0.025 percent 22 brimonidine; is that right?
66 1 MR. DINER: Objection. Vague. Calls for 2 speculation. 3 BY THE WITNESS: 4 A I -- I -- 5 MR. DINER: Mischaracterizes testimony. 6 BY THE WITNESS: 7 A I mean, that's not what I said. And 8 number two, I don't know why you would do that -- 9 what the benefit would be of doing that. 10 BY MR. FREDERICKSON: 11 Q But is that a practice that a person of 12 ordinary skill in the art would understand that a 13 person using an eye redness reducer may follow, 14 the sequential administration of two drops of eye 15 redness reducing -- 16 A I -- I -- 17 MR. DINER: Objection. Vague -- 18 BY THE WITNESS: 19 A A person of skill in the art would 20 understand that you only can fit one drop in at a 21 time, and that's what would be administered. 22	68 1 A Yeah, these experiments were done with 2 low-dose brimonidine at 0.015 percent. 3 Q So of the examples from the specification 4 that you identified, example 1, 4, 5, and 5 Figures 5A through C, none of those involve the 6 administration of 0.025 percent brimonidine, 7 right? 8 A In this -- in this experience -- 9 experiment, they used low-dose brimonidine at 10 0.015 percent. 11 Q That's in Figures 5A through C. 12 It is also the case that examples 1, 4, 13 and 5 do not involve the administration of 14 0.025 percent brimonidine; is that right? 15 A Which ones? I'm sorry. 16 Q 1, 4, and 5. 17 MR. DINER: Asked and answered. 18 BY THE WITNESS: 19 A Yeah, they use low-dose brimonidine. 20 BY MR. FREDERICKSON: 21 Q Examples 1, 4, and 5 do not use 22 brimonidine at a concentration of 0.025 percent,

69 1 do they? 2 A They use similar concentration, but not 3 that exact concentration. 4 MR. DINER: We've been going about an 5 hour. Do you want to take a short break? Maybe a 6 bio break. 7 MR. FREDERICKSON: Sure. Sounds good to 8 me. 9 THE VIDEOGRAPHER: Everyone please stand 10 by. 11 We're going off the record. The time is 12 4:56 p.m. 13 (WHEREUPON, a recess was had.) 14 THE VIDEOGRAPHER: We're going back on the 15 record. The time is 5:03 p.m. 16 BY MR. FREDERICKSON: 17 Q Welcome back, Dr. Noecker. 18 Let's turn to Paragraph 140 of your 19 declaration in the '245 IPR proceeding. 20 In Paragraph 140 you're discussing 21 example 1 from the prior art Gil reference; is 22 that correct?	71 1 A Where does it say the 56? I'm sorry. I'm 2 missing it. 3 Q In Paragraph 140, do you see the 4 parenthetical that says "an additional 56 5 administrations/steps")? 6 MR. DINER: Can I help him? 7 BY MR. FREDERICKSON: 8 Q Yeah, are you looking at Paragraph -- 9 THE WITNESS: (Indiscernible.) 10 BY MR. FREDERICKSON: 11 Q Sorry. Go ahead, Dr. Noecker. 12 A I'm missing it at the moment, 13 Paragraph 140 -- I'm in the wrong thing. Sorry. 14 My bad. That's why it doesn't make sense. 15 Yep, now I'm with you. I'm in the right 16 place now. 17 Q So now you're looking at Paragraph 140 of 18 your '245 patent IPR declaration; is that right? 19 A Yes. 20 Q Okay. You see the sentence: "Following 21 surgery, each subject also receives one drop of 22 brimonidine every four hours while awake for
70 1 A Yes. 2 Q And in this paragraph, you discuss that 3 the Gil example 1 involves the topical 4 administration of multiple drops of 0.03 percent 5 brimonidine; is that right? 6 A Yes. 7 Q And if you go down to the third sentence, 8 it says: "Following surgery, each subject also 9 receives one drop of brimonidine every four hours 10 while awake for 14 days (an additional 56 11 administrations/steps)." 12 Do you see that? 13 A Yes. 14 Q How did you calculate that the following 15 surgery involved an additional 56 16 administrations/steps? 17 A I'm sorry. Can you repeat -- I don't 18 quite get what you're asking. 19 Q Yeah. Why does the fact that a subject 20 also received one drop of brimonidine every four 21 hours while awake for 14 days equal an additional 22 56 administrations/steps?	72 1 14 days (an additional 56 administrations/steps)." 2 Do you see that? 3 A I do. 4 Q How did you calculate that the one drop of 5 brimonidine every four hours while awake for four 6 days equalled an additional 56 7 administrations/steps? 8 A So if you dose every four hours while 9 you're awake, it's about four times a day, and 10 then two weeks is 14 days, so 56. 4 times 56 -- 4 11 times 14. 12 Q So in a single day following surgery, as 13 you interpret the Gil reference, the patient 14 received four separate administrations of 15 brimonidine a day? 16 A It was part of the regimen for treatment 17 of pain. So this is a pain treatment regimen. 18 Q And you understand, though, that each one 19 of those administrations, a single drop of 20 brimonidine's being administered, right? 21 A Yes. 22 Q So what do you mean when you say that the

73 1 one drop of brimonidine every four hours while 2 awake for 14 days in Gil equates to an additional 3 56 administrations/steps? 4 A So over the two-week period, the subject 5 would have 56 administrations. 6 Q Why is not each one of those 7 administrations just a single administration of 8 one drop of 0.03 percent brimonidine? 9 A Well, it's a -- it's a treatment for pain 10 study, it's a treatment regimen. Which is not 11 uncommon in this -- I mean, it's the norm in 12 surgical -- in the surgical situation. 13 Q And so is there a difference in your mind 14 between a treatment regimen that involves the 15 administration of multiple drops of brimonidine 16 over a period of time? 17 MR. DINER: Objection. Vague. Incomplete 18 hypothetical. 19 BY THE WITNESS: 20 A Once again, I mean, this is -- this is a 21 treatment regimen around surgery to treating pain. 22	75 1 independent experiments, that is not a treatment 2 regimen? 3 A Not at all. I mean, a treatment regimen 4 is cohesive, you know, and designed for a period 5 of time. 6 For example, in pain -- post-op pain which 7 happens after surgery, you know, the patient may 8 be at risk for a finite period of time after 9 surgery and you want to cover them. 10 Q Okay. Would you agree, though, that the 11 administration of the three drops in brimonidine 12 in example 1 amount to three 13 administrations/steps? 14 A Once again, the -- going back to 15 example 1 -- you know, these are three separate 16 experiments which happened to occur. They're 17 independent things done that happen to be 18 performed in the same volunteer. 19 Q Do you have Exhibit 2050, the Lumify 20 label, in your materials? 21 MR. DINER: I don't believe we do. 22
74 1 BY MR. FREDERICKSON: 2 Q Can you define what you mean by a 3 treatment regimen? 4 A It's a -- it's a scheduled kind of 5 treatment plan to -- I guess that's the 6 definition. 7 Q Why is it -- is the example one from the 8 '245 patent also a scheduled treatment plan? 9 MR. DINER: Objection. Asked and 10 answered. 11 BY THE WITNESS: 12 A So that's -- that's talking about -- 13 example 1 we're talking about one-drop 14 administration, correct? 15 BY MR. FREDERICKSON: 16 Q Correct. To the same eye three times over 17 a 12-hour period. 18 A No. No. In treatment -- in example 1, 19 it's -- we're talking about a series of 20 experiments. We just talked about that, 21 independent experiments. 22 Q Okay. And so because example 1 involved	76 1 (WHEREUPON, Exhibit No. 2050 was first 2 referenced.) 3 BY MR. FREDERICKSON: 4 Q Well, why don't you go to Paragraph 248 of 5 your declaration in the '245 IPR. 6 A Paragraph 248. 7 Q Paragraph 248 appears in a section of your 8 declaration where you are offering an opinion that 9 the claims of the '245 patent cover the 10 administration of Lumify based on the instructions 11 provided in the Lumify label; is that right? 12 MR. DINER: We have the label now. Just 13 had to dig it out of a binder. 14 BY THE WITNESS: 15 A Yes. 16 MR. DINER: I'm sorry. Could I have that 17 question back? I didn't know what the question 18 was. 19 (WHEREUPON, the record was 20 read by the reporter.) 21 MR. DINER: Thank you. 22

77 1 BY MR. FREDERICKSON: 2 Q And in Paragraph 248, you quote the Lumify 3 label which instructs users to, "Instill one drop 4 in the affected eye(s) every six to eight hours"; 5 is that right? 6 A I'm sorry. Where are you reading from? 7 Q Paragraph 248 on the top of Page 121, it's 8 the second full sentence. It says: "The Lumify 9 label instructs users to 'instill one drop in the 10 affected eye(s) every six to eight hours'" -- 11 A That's -- 12 Q -- that's right? 13 A -- says, yes. 14 Q Would you agree that the Lumify label 15 instructs the administration of up to four drops 16 in a single eye over a 24-hour period of time? 17 A Not necessarily. I mean, this is talking, 18 you know, about doing the dosing basically after 19 the drop has -- the half-life is expired. 20 Q But over the course of 24 hours, the 21 instructions on the label state to apply four 22 drops; is that right?	79 1 BY THE WITNESS: 2 A I mean, it's basically saying -- it says 3 what it says. It instructs what it is. But the 4 basis is based on the half-life of brimonidine if 5 there is -- if there is a loss of effect. 6 BY MR. FREDERICKSON: 7 Q And the label instructs the administration 8 of up to four drops over a 24-hour period of time; 9 isn't that right? 10 A Well, it says you can instill one drop in 11 the affected eye every six to eight hours. 12 Q Which amounts to a total of up to four 13 drops within a 24-hour period of time, right? 14 A But it's getting to the point of the 15 half-life of the drug, and it's talking about 16 last -- that the drug can last up to eight hours. 17 So basically once -- once again, the 18 purpose of the package labeling is to instruct the 19 user, the patient, the customer, whatever, in what 20 to expect or what's safe. 21 And basically that instruction is based on 22 the half-life of the drug being gone or basically
78 1 MR. DINER: Objection. Mischaracterizes 2 the document. 3 BY THE WITNESS: 4 A No, that's not what it says. 5 BY MR. FREDERICKSON: 6 Q The instruction "instill one drop in the 7 affected eye every six to eight hours" instructs 8 that a patient can receive up to four drops of 9 Lumify in a 24-hour period of time, right? 10 A Well, what it's saying is that it's 11 getting to the point of half-life of brimonidine, 12 that the loss -- you know, there will be a loss of 13 effect at that -- depending on the individual, at 14 somewhere around that time point. 15 Q And the Lumify label instructs the patient 16 that he or she can continue to administer drops of 17 Lumify when they experience that loss and effect, 18 right? 19 MR. DINER: Objection to the extent it 20 mischaracterizes the document. And the document 21 speaks for itself. 22	80 1 that the useful half -- the useful amount of the 2 drug being gone due to its known half-life in the 3 human body. 4 Q Is the instruction on the label to 5 administer additional Lumify after the half-life 6 of the drug has elapsed part of a treatment 7 regimen? 8 MR. DINER: Objection. Mischaracterizes 9 the document. The document speaks for itself. 10 BY THE WITNESS: 11 A No, the document's informing the user of 12 what to expect, kind of, the duration of action to 13 be. And so it's based on, you know, prior 14 information, which is a plethora of clinical 15 information that studied this a lot. 16 And that's -- that's the role of the 17 package insert, you know, in terms of instructions 18 for use. It's based on what's been studied, the 19 data that's been presented, that's what's in the 20 labeling. 21 BY MR. FREDERICKSON: 22 Q And the labeling for Lumify instructs the

81 1 administration of between three to four drops 2 within a 24-hour period, right? 3 MR. DINER: Objection. Mischaracterizes 4 the document. 5 BY THE WITNESS: 6 A No, it's instructing the user how -- how 7 quickly -- it says works within one -- in one 8 minute, how quickly to expect an effect, which a 9 user would want to know. And it's telling you 10 about how long -- you know, what's realistic about 11 how long it's going to last and achieving what you 12 want it to achieve. 13 That's the purpose of the package insert. 14 BY MR. FREDERICKSON: 15 Q And after Lumify no longer has -- 16 achieving what the patient wants it to achieve, 17 the patient has the ability to instill another 18 drop of Lumify; is that right? 19 MR. DINER: Objection. Document speaks 20 for itself. 21 BY THE WITNESS: 22 A I mean, this is just instructing what to	83 1 BY THE WITNESS: 2 A What the person's going to do is they're 3 going to instill one drop. 4 BY MR. FREDERICKSON: 5 Q That person following the label can 6 administer as many as four drops of Lumify over a 7 24-hour period of time, though, right? 8 A What they understand is they can instill 9 one drop at a time and to expect that this drop is 10 going to do its thing for about six to eight 11 hours. 12 Q Isn't that also true in example 1 of Gil, 13 following the surgery, that a person of ordinary 14 skill in the art would understand that the patient 15 can only administer one drop at a time and the 16 Lumify -- and the brimonidine is going to do its 17 thing for a period of time before another drop is 18 needed? 19 MR. DINER: Objection. Objection, vague. 20 And that document speaks for itself. 21 Mischaracterizes that document. 22
82 1 expect in terms of duration of action, that the 2 drug lasts up to six -- up to eight hours. 3 BY MR. FREDERICKSON: 4 Q Does the Lumify label instruct the 5 administration of a single drop of Lumify over a 6 24-hour period of time or multiple drops of Lumify 7 over a 24-hour period of time? 8 MR. DINER: Objection. Document -- 9 mischaracterizes the document. And the document 10 speaks for itself. 11 BY THE WITNESS: 12 A Well, once again, what we know in clinical 13 practice is one drop is all that's going to fit 14 into the eye. 15 BY MR. FREDERICKSON: 16 Q So does the Lumify label instruct the 17 administration of a single drop over a 24-hour 18 period of time or up to four drops of Lumify over 19 a 24-hour period of time? 20 MR. DINER: Objection. Mischaracterizes 21 the document. Speaks for itself. 22	84 1 BY THE WITNESS: 2 A I mean, Gil -- no. So the Gil reference 3 is talking about use -- a treatment regimen for 4 pain after -- after surgery. So it's being used 5 to control pain, number one. 6 It's also part of a predetermined 7 postsurgical -- pre and postsurgical regimen, 8 which is very common in clinical practice in 9 medicine that you're going to preordain that. 10 And there's not patient -- not patient 11 decision-making, it's a preordained regimen to 12 prevent problems after surgery. Which is our -- 13 which is how we practice in clinical medicine. We 14 basically want to avoid problems; we're not -- so 15 we have these preordained regimens. And that's 16 exactly what's going on in Gil to treat pain. 17 BY MR. FREDERICKSON: 18 Q What's the difference between the patient 19 in Gil who receives four drops of a brimonidine in 20 a single day and the patient following the Lumify 21 label who also can receive four drops of Lumify 22 over the course of a day?

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85 1 MR. DINER: Objection. Asked and 2 answered. 3 BY THE WITNESS: 4 A The patient -- they'll administer Lumify, 5 is going to administer one drop with Lumify. 6 BY MR. FREDERICKSON: 7 Q But that's also true in Gil that each 8 administration is a single drop, right? 9 A No, it's part of a preordained pain 10 regimen treatment, just as we do for all our 11 surgeries. Just -- say we do whatever -- we 12 prescribe antibiotics in the exact same way. It's 13 not like: Oh, person take this if you want, you 14 know, one time. 15 It's: No, you have to do this if you're 16 going to get the desired effect to prevent an 17 infection. 18 The same thing in Gil; if you want to 19 prevent pain, you do this treatment regimen this 20 way because it's been tested and this is what our 21 standard -- standard of care is. 22 Q And how is that treatment regimen, the	87 1 BY THE WITNESS: 2 A Yeah, it's a -- it's a -- I think I 3 answered this question three different times, but, 4 I mean, Gil is a preordained treatment regimen for 5 pain, for surgical pain. 6 Q Why is that -- 7 A To prevent pain. 8 Q When it comes to understanding whether the 9 administration of Gil is covered by claim 1 of the 10 '245 patent versus the administration of Lumify 11 being covered by claim 1 of the '245 patent, why 12 does it matter that the patient in Gil is 13 receiving the brimonidine as part of a preordained 14 treatment regimen? 15 MR. DINER: Objection. Assumes facts not 16 in evidence. And asked and answered. 17 BY THE WITNESS: 18 A I think I answered that question. 19 BY MR. FREDERICKSON: 20 Q I don't think you have, Dr. Noecker, so if 21 you can explain it for me, I'd appreciate it. 22 A What was the question again?
86 1 instruction that the patient gets from the 2 investigator in Gil, different from the Lumify 3 label that says instill one drop every six hours? 4 MR. DINER: Objection. Asked and 5 answered. 6 BY THE WITNESS: 7 A You're comparing apples and oranges once 8 again. I think I -- I think I just answered that 9 question. 10 BY MR. FREDERICKSON: 11 Q Well, the investigator in Gil tells the 12 patient instill one drop of 0.3 -- 0.03 percent 13 brimonidine every four hours, right? 14 A It's part of a treatment regimen for pain 15 for surgery -- postoperative pain. It's 16 preordained. 17 Q And, so in your mind, the difference 18 between the instruction on the Lumify label and 19 the treatment regimen in Gil is that the treatment 20 regimen in Gil is preordained? 21 MR. DINER: Objection to the extent it 22 mischaracterizes the document and his testimony.	88 1 Q You understand that one of the -- that the 2 claims need to be interpreted the same way for 3 purposes of understanding if they cover the prior 4 art as well as if they cover the administration of 5 Lumify, right? 6 MR. DINER: Objection. Calls for a legal 7 conclusion. 8 BY THE WITNESS: 9 A I'm following you. Go ahead. 10 BY MR. FREDERICKSON: 11 Q Did you have that understanding that, when 12 you were offering the testimony as to whether the 13 instructions provided on the Lumify label cover 14 claim 1 of the '245 patent, you were to apply the 15 same interpretation of claim 1 as you were when 16 you were analyzing the prior art references like 17 Gil? 18 MR. DINER: Calls for a legal conclusion. 19 BY THE WITNESS: 20 A I mean, I followed the advice -- I'm 21 obviously not a lawyer, an attorney, and I just 22 followed my legal advice to apply the label to

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89 1 claim 1. 2 BY MR. FREDERICKSON: 3 Q And did you understand that you needed to 4 interpret the scope of claim 1 of the '245 patent 5 consistently in the two different analyses that 6 you performed? 7 MR. DINER: Objection. Vague. 8 BY THE WITNESS: 9 A What do you mean "two different analyses"? 10 BY MR. FREDERICKSON: 11 Q You analyzed whether claim 1 of the '245 12 patent was rendered obvious by prior art 13 references like Gil and Norden, right? 14 A Okay. 15 Q Is that one of the opinions that you've 16 offered in these proceedings? 17 A I'm following you, yes. 18 Q You also offer an opinion that claim 1 of 19 the '245 patent is covered by the administration 20 of Lumify based on the instruction provided in the 21 Lumify label, right? 22 A That's what we're talking about here in	91 1 offered is that the administration of 0.03 percent 2 of brimonidine following surgery four times a day 3 for 14 days amounted to 56 additional 4 administrations or steps, right? 5 A Yes. 6 Q And that you got to 56 because each day 7 the patient in Gil received four separate 8 administrations of brimonidine, right? 9 A In that regimen for treatment of pain. 10 Q The Lumify label contemplates that an 11 individual patient can receive between three and 12 four drops of Lumify over a 24-hour period of 13 time; would you agree with that? 14 MR. DINER: Objection. Vague. Document 15 speaks for itself. 16 BY THE WITNESS: 17 A I mean, what -- the person taking Lumify 18 for a cosmetic drug is going to apply one drop to 19 get the desired effect. 20 BY MR. FREDERICKSON: 21 Q Until it wears off, right? 22 A The drug has a half-life, correct.
90 1 these paragraphs, yes. 2 Q So you understand -- or let me ask you: 3 Did you understand that when you were testifying 4 about the scope of claim 1 and what it covered for 5 purposes of your obviousness opinion and purposes 6 of what the Lumify product does, you were to 7 interpret claim 1 the same? 8 MR. DINER: Objection. Vague. 9 BY THE WITNESS: 10 A I'm sorry. Can you make that a simpler 11 question? That was a really long question. 12 BY MR. FREDERICKSON: 13 Q Did you understand that the scope and 14 interpretation of claim 1 does not differ between 15 the two opinions that you've offered? 16 MR. DINER: Vague. 17 BY THE WITNESS: 18 A I mean claim 1 is claim 1; it speaks for 19 itself. 20 BY MR. FREDERICKSON: 21 Q Now, claim -- when talking about the prior 22 art reference Gil, one of the opinions that you	92 1 Q And so the Lumify label recognizes that 2 the drug has a half-life and wears off, right? 3 A Yes. 4 Q And because the Lumify has a half-life and 5 wears off, the Lumify label instructs patients to 6 administer additional drops upon the wearing off, 7 right? 8 MR. DINER: Objection. Mischaracterizes 9 the document. 10 BY THE WITNESS: 11 A No, the label says instructs -- put one 12 drop in your eye to get the affected effect. 13 Maybe I'm going to go to bed in six hours. 14 BY MR. FREDERICKSON: 15 Q But it says instill one drop in the 16 affected eyes every six to eight hours, correct? 17 A You're going to -- it's instructing you 18 how long you expected the drug to last. 19 Q So every -- 20 A Who cares if you miss a drop. In this 21 postsurgical regimen, if you don't follow that 22 regimen, the chance -- if you think that

93 1 brimonidine works for pain, which it doesn't, but 2 in the theoretical thing, you want that patient to 3 follow the regimen. 4 And they say -- they stop following the 5 regimen, they have pain, they kind of screwed up, 6 right? And then we -- everyone has to do 7 something to try to fix that. If you don't take 8 Lumify and you go to bed, who cares? 9 Q But is that still covered by claim 1 of 10 the '245 patent is the question, not whether or 11 not someone cares. 12 MR. DINER: Vague. It's vague. 13 BY THE WITNESS: 14 A Claim is instructing to use one drop of 15 Lumify to get the desired effect. 16 BY MR. FREDERICKSON: 17 Q Okay. And so within the four-hour window 18 of Gil, the patient is using one drop of Lumify to 19 get the desired effect, right? 20 MR. DINER: Objection. Mischaracterizes 21 the Gil document. I think you said "Lumify." 22	95 1 Are you at Paragraph 133? 2 A Yes, I am. 3 Q Okay. And in Paragraph 133, you're 4 offering some opinions about the Norden prior art 5 reference; is that correct? 6 A Yes, that's correct. 7 Q In the second-to-last sentence, it starts: 8 "I understand that in Lasik patients, microvessel 9 hemorrhage can be caused by trauma to the eye by, 10 for example, the blood-vessel-rupturing impact of 11 Lasik surgery that makes the eye appear pink." 12 Do you see that? 13 A Yes. 14 Q And you cite Dr. Donnenfeld's declaration; 15 is that correct? 16 A That's correct. 17 Q Is Dr. Donnenfeld from whom you received 18 the information that, in Lasik patients, 19 microvessel hemorrhage can be caused by trauma to 20 the eye by, for example, the 21 blood-vessel-rupturing impact of Lasik surgery? 22 A Yes.
94 1 BY THE WITNESS: 2 A He's not using Lumify. 3 MR. FREDERICKSON: Yeah, I'll fix the 4 question. Thank you, Bryan. 5 BY MR. FREDERICKSON: 6 Q In Gil example 1, the patient is receiving 7 one drop of 0.03 percent brimonidine to get the 8 desired effect for a period of time, right? 9 MR. DINER: Objection. Document speaks 10 for itself. 11 BY THE WITNESS: 12 A Well, you want to have the desired effect 13 for two weeks. 14 BY MR. FREDERICKSON: 15 Q Correct. And to accomplish that, Gil 16 instructs the administration of 0.03 percent 17 brimonidine every four hours while awake, right? 18 A Gil was talking about a treatment regimen 19 for treating pain, using brimonidine for treating 20 pain, a theoretical use of it. 21 Q Let's turn to Paragraph 133 of your 22 declaration in the '245 patent IPR.	96 1 Q Were you aware that microvessel hemorrhage 2 was caused by Lasik surgery prior to being told 3 that by Dr. Donnenfeld? 4 A He kind of clarified that. 5 Q Let's go to -- back to the '245 patent and 6 take a look at example 2 on column 21. 7 Column -- example 2 in the '245 patent is 8 entitled "Lasik prophylaxis"; is that correct? 9 A That's correct. 10 Q And the example describes an experiment 11 that evaluates the ability of low-concentration 12 brimonidine to reduce postoperative hyperemia and 13 conjunctival hemorrhage following Lasik surgery, 14 correct? 15 A Correct. 16 Q Would a person of ordinary skill in the 17 art reading example 2 understand the references to 18 hyperemia in that section to be microvessel 19 hemorrhage? 20 A We'll take it in the context of this is a 21 Lasik procedure, yes. 22 Q So when example 2 refers to hyperemia,

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97 1 that's referring to microvessel hemorrhage in your 2 opinion? 3 A So it's -- it's, you know -- how do I put 4 it? Vessel dilation and micro -- micro -- what's 5 the term? Microhemorrhage. 6 Q Microvessel hemorrhage. 7 A Microvessel hemorrhage. The tiny -- the 8 tiny little twigs at the limbus of the eye. 9 Q So a person of ordinary skill in the art 10 referring and reading example 2 would understand 11 hyperemia to refer to both vasodilation 12 engorgement of the blood vessels in the eye and 13 microvessel hemorrhage? 14 A (Inaudible) Lasik. 15 Q I'm sorry? 16 A In the context of Lasik. 17 Q What about in claim 1 of the '245 patent 18 that refers to ocular hyperemia; do you see that? 19 A Yes. 20 Q Okay. Does the person of ordinary skill 21 in the art understand that the reference to ocular 22 hyperemia in claim 1 of the '245 patent also	99 1 person of skill in the art. 2 Q Okay. So which person of skill in the art 3 then is interpreting the phrase "ocular hyperemia" 4 in claim 1 of the '245 patent, the Lasik person or 5 the glaucoma person of skill in the art? 6 MR. DINER: Vague. 7 BY THE WITNESS: 8 A Could you be more specific? I don't 9 really understand your question. 10 BY MR. FREDERICKSON: 11 Q So you seem to have suggested that a 12 person of ordinary skill in the art who 13 specializes in Lasik may have a different 14 understanding of the term "hyperemia" than a 15 person of ordinary skill in the art who 16 specializes in glaucoma; is that correct? 17 MR. DINER: Objection to the extent it 18 mischaracterizes his testimony. 19 BY THE WITNESS: 20 A So as I put in my, you know, declaration, 21 we had both those definitions, right? 22 Dr. Donnenfeld broadened it for us in the context
98 1 refers to both engorgement of the blood vessels 2 and microvessel hemorrhage? 3 A This is, I mean, traditionally talking 4 about, you know, a traumatized eye because Lasik 5 is arguably a trauma model, a trauma event. 6 You know, this is talking about vessel 7 engorgement -- or having -- yeah, bigger than you 8 want. 9 Q Okay. So your understanding of the 10 reference to ocular hyperemia in claim 1 of the 11 '245 patent is different than the meaning of 12 hyperemia used in example 2 in the specification? 13 A Well, as I have my declaration -- 14 right? -- we have Dr. Donnenfeld's, kind of, 15 Lasik-surgeon-specific viewpoint that includes the 16 broader definition versus, as he put it, the 17 glaucoma person or, you know, person of skill in 18 the art, which basically we stuck -- we basically 19 are using it in a different context, a nonsurgical 20 context where it's -- 21 Q Who's "we"? 22 A Basic- -- basically a glaucoma specialist	100 1 of Lasik specifically, that microvessel hemorrhage 2 was just a pretty Lasik-specific thing versus, you 3 know, an eyedrop-induced hyperemia, which is more 4 common in the glaucoma world. 5 BY MR. FREDERICKSON: 6 Q And so reading example 2 of the '245 7 patent, the person of ordinary skill in the art 8 would understand that the hyperemia there is 9 referring to the broader definition that includes 10 microvessel hemorrhage, correct? 11 A That's what we would use, yes. 12 Q But what about reading claim 1 and the 13 term "ocular hyperemia"; would that broader 14 definition that includes microvessel hemorrhage 15 also apply? 16 MR. DINER: Objection. Vague. Asked and 17 answered. 18 BY THE WITNESS: 19 A It would depend how you -- what context 20 you're using it. 21 BY MR. FREDERICKSON: 22 Q In the context of claim 1 in the '245

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101 1 patent, does a person of ordinary skill in the art 2 understand the term "ocular hyperemia" to include 3 the broader concept of microvessel hemorrhage? 4 MR. DINER: Objection. Asked and 5 answered. 6 BY THE WITNESS: 7 A I think we already answered that question. 8 It's in the declaration. 9 BY MR. FREDERICKSON: 10 Q So can you tell me, does a person of 11 ordinary skill in the art understand the term 12 "ocular hyperemia" in claim 1 of the '245 patent 13 to include the broader concept of microvessel 14 hemorrhage? 15 MR. DINER: Objection. Asked and 16 answered. 17 BY THE WITNESS: 18 A So I explained it in the different 19 contexts. 20 BY MR. FREDERICKSON: 21 Q And what about in the context of claim 1 22 of the '245 patent?	103 1 BY MR. FREDERICKSON: 2 Q Okay. And what about in the context of 3 claim 1 of the '245 patent; is that a Lasik 4 definition of "ocular hyperemia" or the other 5 definition limited to engorgement of blood 6 vessels? 7 A The answer to that is a person skilled in 8 the art from a glaucoma specialist perspective, 9 which we speak exclusively of or more limited to 10 vessel dilation. 11 Q Do you understand that claim 1 of the '245 12 patent includes eye redness caused by surgical 13 procedures such as eye red- -- Lasik? Excuse me. 14 MR. DINER: Objection. Calls for a legal 15 conclusion. 16 BY THE WITNESS: 17 A I don't understand the question. 18 BY MR. FREDERICKSON: 19 Q Does claim 1 of the '245 patent include 20 eye redness that is caused by surgical procedures 21 such as Lasik? 22 MR. DINER: Objection. Calls for a legal
102 1 MR. DINER: Asked and answered. 2 BY THE WITNESS: 3 A I answered your question. 4 BY MR. FREDERICKSON: 5 Q What does a person of ordinary skill in 6 the art understand the term "ocular hyperemia" to 7 mean in the context of the '245 patent, claim 1? 8 A Well, as I said in my declaration, we had 9 those kind of parallel definitions, correct? 10 Q So the parallel definitions you're 11 referring to are the definitions that are either 12 engorgement of the blood vessel or microvessel 13 hemorrhage, right? 14 A As I -- 15 MR. DINER: Objection. Mischaracterizes 16 the testimony. 17 BY THE WITNESS: 18 A I mean, I think we already went over this. 19 I mean, we're talking about using, in the context 20 of Lasik, we used Dr. Donnenfeld's Lasik 21 specialist definition. 22	104 1 conclusion. Outside the scope. 2 BY THE WITNESS: 3 A Are you asking for the -- for the words, 4 do the words exist in claim 1? 5 BY MR. FREDERICKSON: 6 Q Yes -- well, not do the words exist. Does 7 the method covered in claim 1 capture the 8 administration of 0.025 percent of brimonidine in 9 a single drop to patients who have eye redness on 10 account of having a surgical procedure such as 11 Lasik? 12 MR. DINER: Objection. Calls for a legal 13 conclusion. Outside the scope. 14 BY THE WITNESS: 15 A Yeah, I mean, claim 1 speaks for itself. 16 BY MR. FREDERICKSON: 17 Q And so can you tell me and answer my 18 question whether claim 1 speaking for itself 19 includes the administration of brimonidine as 20 claimed to patients who have eye redness caused by 21 a surgical procedure such as Lasik? 22 MR. DINER: Objection. Outside the scope

105 1 of his declaration. Calls for a legal conclusion. 2 BY THE WITNESS: 3 A I wasn't asked to opine on that. 4 BY MR. FREDERICKSON: 5 Q So you're not offering an opinion as to 6 whether claim 1 includes the administration of 7 brimonidine as claimed to patients who have eye 8 redness caused by a surgical procedure such as 9 Lasik? 10 MR. DINER: Asked and answered. 11 BY THE WITNESS: 12 A I wasn't asked to opine on that in my 13 declaration. 14 BY MR. FREDERICKSON: 15 Q Let's go -- stick with -- or turn to 16 Paragraph 135 of your declaration in the '245 IPR. 17 You're still talking about Norden here. 18 A Okay. 19 Q And in Norden now, you are making a 20 reference to -- or in Paragraph 135, you're making 21 a reference between the observed differences 22 between the test and control groups in Norden	107 1 Q If you can take a look at the Norden 2 reference. It's Exhibit 1006. 3 (WHEREUPON, Exhibit No. 1006 was first 4 referenced.) 5 BY THE WITNESS: 6 A Yes. 7 BY MR. FREDERICKSON: 8 Q And it's Page 5 of 7, I think is the 9 relevant page. 10 Do you see the paragraph that starts: 11 "Slit-lamp microscopy" -- "microscopy was 12 performed five minutes postoperatively"? 13 A I do. 14 Q And later in that same paragraph, it 15 writes: "For purposes of this study, eyes were 16 examined again the next morning," correct? 17 A Exactly. 18 Q And then: "The operating surgeon (R.N.) 19 performed the postoperative examinations and 20 recorded the amount of subconjunctival hemorrhage, 21 hyperemia, bleeding from the micropannus," 22 correct?
106 1 could not have been due to differences in vessel 2 diameter at the time of the second examination at 3 least 12 hours after surgery. 4 Is that right? 5 A Yes. 6 Q The investigator in the Norden reference 7 examined the patient's eyes twice following Lasik; 8 is that right? 9 A Yes, but for purposes of the study, he -- 10 the observe- (inaudible) done on the first 11 postoperative day. 12 Q Sorry. You broke up a little. Can you 13 just repeat that? 14 A So for purposes of the study, the 15 evaluations were done on the first postoperative 16 day. 17 Q Okay. So your opinion in reading Norden 18 was the only time that Norden measured redness was 19 during the second evaluation the following day? 20 A Yeah, that's what it says. It says for 21 purposes of the study, that's when the -- the 22 evaluations were done.	108 1 A Yes, that's what it said. 2 Q Okay. And so you're interpreting the 3 phrase "for purposes of this study, eyes were 4 examined again the next morning" to refer to when 5 the subconjunctival hemorrhage, hyperemia, and 6 bleeding was being evaluated by Norden? 7 A That's what it says here. 8 I mean, this is a horrible paper. I mean, 9 this -- I wouldn't -- this would never get 10 published in 2025. I mean, there's so many 11 problems with this paper. I mean, and that's just 12 one of them that, you know, all these measurements 13 were done beyond the time that brimonidine would 14 even play a role in this. 15 Besides that it's uncontrolled, just 16 random patients taken to a busy Lasik clinic. 17 Q So your interpretation of Norden in this 18 proceeding was that the redness that he was 19 evaluating was measured during the second 20 examination the following day after surgery, 21 right? 22 MR. DINER: Objection. Mischaracterizes

109 1 the document. Vague. 2 BY THE WITNESS: 3 A I mean, it says for purposes -- purposes 4 of the study they were examined the next day. To 5 me, that says that's when all the data was 6 obtained about bleeding and all these other random 7 things that have limited stuff to do with 8 hyperemia. 9 BY MR. FREDERICKSON: 10 Q Now, you mentioned that, by the time of 11 that second study, the brimonidine would not have 12 any vasoconstricting effect because of the 13 half-life of brimonidine; is that right? 14 MR. DINER: Objection to the extent it 15 mischaracterizes the declaration. 16 BY THE WITNESS: 17 A I mean, in general, we know that 18 brimonidine has a half-life of six to eight hours, 19 and we wouldn't expect any, you know, clinical 20 vasoconstriction based on brimonidine however 21 long -- 24 hours or whatever it was after 22 administration. So that's one of the problems	111 1 A Basically loss of clinical effect. 2 Q Now, you also offer the opinion that 3 Norden involves the administration of the 4 equivalent amount of brimonidine of 0.4 percent 5 brimonidine; is that right? 6 A That's correct, because there were quite a 7 few -- there was a lot of dosing going on. He was 8 kind of hyper dosing. 9 Q And so within two to three half-lives of 10 the administration of 0.4 percent of the 11 brimonidine, the patient still has the 12 equivalent -- more than the equivalent amount of a 13 single drop of 0.025 percent brimonidine, right? 14 MR. DINER: Objection to the extent it 15 mischaracterizes the declaration. 16 BY THE WITNESS: 17 A I don't understand your logic. 18 BY MR. FREDERICKSON: 19 Q Well, so after the first four to six hours 20 elapsed, the patients have lost half the amount of 21 brimonidine that's been administered; is that 22 correct?
110 1 with this paper is the data doesn't support -- the 2 methodology doesn't support the results and the 3 results don't support the conclusions. 4 There's major flaws in this. 5 BY MR. FREDERICKSON: 6 Q So you write in Paragraph 135 that the 7 brimonidine's half-life is four to six hours and 8 by the second examination, it was two to three 9 half-lives later; is that right? 10 A That's what's written, yes. That's what I 11 wrote, yes. 12 Q And so a half-life is the amount of time 13 it takes for half of the drug to leave the system; 14 is that fair? 15 A Okay. 16 Q Can you define what a half-life is for me 17 if you don't like that definition? 18 A It depends on the context you're doing, 19 but that's one definition. And basically it 20 implies clinical efficacy. 21 Q What is the definition of half-life that 22 you were using in Paragraph 135?	112 1 A What do you mean "lost"? 2 Q The half-life, it's no longer in the body, 3 it's been eliminated from the body; is that how 4 that works? 5 A Okay. 6 Q Well, do you agree that after the first 7 four to six hours, approximately one half of the 8 brimonidine that had been absorbed into the body 9 had been eliminated from the body? 10 MR. DINER: Objection. Vague. 11 BY THE WITNESS: 12 A Yeah, I don't understand the context 13 you're asking this. 14 BY MR. FREDERICKSON: 15 Q In the context of the Norden study where 16 the patient received, according to you, the 17 equivalent amount of a 0.4 percent administration 18 of brimonidine, after the first four to six hours, 19 then the equivalent amount of brimonidine still in 20 the system would be equivalent to 0.2 percent, 21 right? 22 A Not necessarily.

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113 1 Q And why do you say that? 2 A Because it's much more complicated I think 3 than you're implying. 4 Q Okay. And so how much brimonidine 5 remained in the system in the patients in Norden 6 after the first four to six hours? 7 A What we can tell you is that it's likely 8 all the clinical effect was gone -- the meaningful 9 clinical effect was gone from the receptor 10 binding. 11 Q Why do you say that? 12 A Because that's what clinical evidence is 13 supported. This drug is so well studied for 14 decades. 15 Q But the clinical effect that had been 16 evaluated was the clinical effect of brimonidine 17 in lowering intraocular pressure, right? 18 MR. DINER: Objection. Vague. 19 BY THE WITNESS: 20 A There's a ton of evidence. They're 21 looking at many different uses. I mean, you 22 alluded to Gil trying to use it for pain.	115 1 dosing, i.e. dosing a lot more than 0.025 percent 2 of brimonidine, right? 3 A Right, to get a very high peak to achieve 4 a certain amount of receptor binding. 5 Q And then over time, that brimonidine is 6 eliminated from the system, right? 7 MR. DINER: Objection. Vague. 8 BY THE WITNESS: 9 A It loses efficacy. Okay. 10 BY MR. FREDERICKSON: 11 Q And the way that the brimonidine is -- the 12 measurement by which scientists determine how much 13 brimonidine remains in the body is the half-life, 14 correct? 15 A Yes and no. 16 Q So what else, other than the half-life, 17 determines how much -- 18 A I mean, I think you're making big 19 assumptions based on what we call half-life to any 20 drug remaining -- are you assuming, like, it's 21 just a straight line, like, you can just do math 22 and divide it and divide it and divide it?
114 1 Q Okay. And so what is the -- what was the 2 scientific literature about the -- we know today 3 that 0.025 percent of brimonidine is sufficient to 4 achieve eye whitening, correct? Or redness 5 reduction? 6 A Well, Lumify does that. 7 Q Right. And so how do you know that the 8 concentration and the amount of brimonidine that 9 was in the patients as of Norden's following day 10 wasn't equivalent to the amount of brimonidine or 11 near the amount of brimonidine that's administered 12 by a single drop of 0.025 percent Lumify? 13 MR. DINER: Objection. Vague. 14 BY THE WITNESS: 15 A It doesn't -- it doesn't work that way. 16 BY MR. FREDERICKSON: 17 Q Why not? 18 A I don't even understand the math -- I'm 19 sorry. I'm really confused. I don't understand 20 the logic or the math why there would be anything 21 there. 22 Q Well, you characterize Norden as hyper	116 1 Q Are you -- 2 A That would be completely flawed logic if 3 you are. 4 Q Okay. And so -- but you are pointing to 5 the half-life of brimonidine to suggest that it 6 had all been eliminated by the second examination, 7 right? 8 A The clinical effect -- efficacy is, you 9 know, not meaningful. 10 Q And how do you know that? 11 A Because this drug has been studied so 12 much. I mean, we see an indication of that in the 13 Lumin- -- in the Lumify label, that there's a 14 significant loss of efficacy at that six to eight 15 hours. 16 You know, back in the day, drug -- you 17 know, blood levels were studied, you know, in the 18 early clinical trials. I mean, that's how long 19 the drug does its thing by binding to receptors. 20 Q Okay. So your testimony is, when it comes 21 to Norden, the examination of what Norden called 22 hyperemia occurred the following -- the day

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117 1 following surgery, correct? 2 MR. DINER: Objection. Mischaracterizes. 3 BY THE WITNESS: 4 A I mean, Norden -- it says -- it says that 5 for purposes of the study, the patients were 6 evaluated on the first postoperative day. So we 7 have to take that -- I mean, this is one of the 8 problems with Norden, why it's such a bad paper, 9 that there's all (inaudible) and arbitrariness 10 and -- and you're not really sure what they're 11 measuring. It's a very flawed paper. 12 But if I was to interpret it, I would say 13 that's what the words on the paper said; for 14 purposes of the study, the patients were seen on 15 postoperative day and measured. 16 Which makes sense. These people are 17 having Lasik. So they did how many -- how many 18 did he do? -- 61 eyes in a couple hours. 19 That's, like, chaotic in the real word. 20 How are you going to sit down and calmly evaluate 21 every eye, every patient? With people coming in, 22 people coming out, you can't do a clinical study	119 1 case may be and people coming in, people coming 2 out, getting set up to do the procedure, doing the 3 procedure, somebody's administering eyedrops, 4 somebody's doing this, somebody's doing that. 5 It's chaos. 6 I operate, and, like I said, I couldn't 7 conduct a clinical study in that situation. I do 8 half -- when I operate, I do half the number of 9 the patients. 10 So it's not -- it's not a situation 11 conducive to getting reliable, consistent, 12 unbiased information in a reliable fashion. You 13 can't trust the methodology. 14 THE VIDEOGRAPHER: Counsel, sorry to 15 interrupt. We have about ten minutes left on this 16 tape. 17 MR. FREDERICKSON: I will ask a couple 18 more follow-up questions, and then we can take a 19 break. 20 BY MR. FREDERICKSON: 21 Q What is your -- what's the basis for your 22 testimony that Norden performed all 61 surgeries
118 1 under that situation. 2 So could he do the measurements calmly on, 3 like, Saturday morning in his office when no one 4 else is around? Yeah, I believe that he probably 5 can do a reliable evaluation. 6 But this is just one of the many flaws 7 with the Norden paper, it's just you -- you can't 8 trust anything out of it. 9 BY MR. FREDERICKSON: 10 Q Can you explain -- I don't understand your 11 point about the chaos versus whether you can 12 measure the eyes calmly. 13 What's chaotic and what's calm about the 14 Norden study? 15 A There's 61 -- you're trying to conduct a 16 clinical study at the same day -- when we do 17 high-level clinical studies, which we did in the 18 brimonidine trials, you know, you dedicate hours 19 to one patient. 20 You know, this is a -- imagine having 61 21 surgeries in an afternoon in one place, in one 22 relatively small room, or two rooms, whatever the	120 1 in the same day? 2 A I think it says it. 3 I mean, typically if it didn't happen on 4 the same day, you'd give a range of the date. 5 I mean, that's another flaw of this; it 6 doesn't even -- it doesn't give the date range. 7 Because that's something we commonly do is say the 8 dates between -- so you can have some kind of time 9 context of what was going on in the world or what 10 treatment options were available. 11 So it -- I mean, that's another flaw is it 12 doesn't state when it was -- you know, the date 13 range or dates that these things were done. 14 MR. FREDERICKSON: Why don't we take a 15 break and we can change out the tape. 16 THE VIDEOGRAPHER: Everyone please stand 17 by. 18 We're going off the record. The time is 19 5:56 p.m. 20 (WHEREUPON, a recess was had.) 21 THE VIDEOGRAPHER: We're going back on the 22 record. The time is 6:04 p.m.

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121 1 BY MR. FREDERICKSON: 2 Q Dr. Noecker, can you turn to Exhibit 2028, 3 the Fudemberg reference. 4 A Yes. 5 (WHEREUPON, Exhibit No. 2028 was first 6 referenced.) 7 BY THE WITNESS: 8 A Yes. 9 BY MR. FREDERICKSON: 10 Q If you turn to the -- it's Page 2 of 6 of 11 the exhibit. The authors, Scott Fudemberg, Corey 12 Batiste, and L. Jay Katz, do you know any of them? 13 A Yes. 14 Q Who do you know? 15 A All of them. 16 Q Okay. How do you know the authors of this 17 reference? 18 A They're colleagues. 19 Q Are they all ophthalmologists? 20 A They are. 21 Q And do the authors of the Fudemberg 22 reference specialize in any particular field in	123 1 references that are cited. 2 Do you see those? 3 A Yes. 4 Q And the authors of Fudemberg did not cite 5 to the Norden journal article; is that correct? 6 A Correct. 7 Q And they do not cite to any of the papers 8 that cite to the Norden journal article, such as 9 Desco (phonetic) or Huang; is that right? 10 A That's correct. 11 Q Can we turn to Paragraph 203 of your 12 declaration in the '245 IPR. 13 Are you there? 14 A Yes. 15 MR. DINER: Just give me one second, 16 please. I'm a little behind. 17 Okay. Thank you. 18 BY MR. FREDERICKSON: 19 Q In that paragraph, you write: 20 "Administering a brimonidine eyedrop would not 21 lower the intraocular pressure below a normal 22 intraocular pressure range due to the episcleral
122 1 ophthalmology? 2 A In glaucoma. 3 Q All three of the authors of the Fudemberg 4 reference specialize in glaucoma? 5 A Yeah. 6 Q Underneath the name of the authors, 7 it's -- it refers to the Willis Eye Institute, 8 Jefferson Medical College, Anna and William 9 Goldberg Glaucoma Service and Research Center. 10 Do you see that? 11 A Yes. Wills. 12 Q Or Wills. Excuse me. Wills Eye 13 Institute. 14 Are you familiar with the Anna and William 15 Goldberg Glaucoma Services and Research Center? 16 A It's the department of glaucoma at the eye 17 hospital. 18 Q The eye hospital at Jefferson Medical 19 College? 20 A Yeah, the Wills Eye Institute. 21 Q In the Fudemberg reference, Exhibit 2028, 22 at the last two pages, there's a series of	124 1 venous pressure, which would act as a biological 2 safety net to prevent or buffer the intraocular 3 pressure from dropping below the normal range." 4 Do you see that? 5 A Yes. 6 Q Can you explain to me what you mean by 7 that testimony? 8 A That there's a natural physiologic floor 9 which basically all medic -- all eyedrop 10 medications can't get below. 11 Q And what is normal intraocular pressure? 12 A It's a ballpark between 10 and 21 or '2. 13 Q And so there's a natural physiological 14 floor below which intraocular pressure can't be 15 lowered, at least using drugs and eyedrops? 16 A Yes, it's basically the pressure from 17 outside the eye pushing back. 18 Q And what is that physiologic floor? 19 MR. DINER: Objection. Vague. 20 BY THE WITNESS: 21 A 8 to 10 millimeters, depending on the 22 individual.

125 1 BY MR. FREDERICKSON: 2 Q Okay. So based on the physiological 3 floor, it's -- is it impossible to lower 4 intraocular pressure below normal intraocular 5 pressure by administering brimonidine? 6 MR. DINER: Objection. Vague. 7 BY THE WITNESS: 8 A I mean, it would depend on the clinical 9 context, but there's a floor somewhere. 10 BY MR. FREDERICKSON: 11 Q Okay. And that floor may or may not be 12 below the range of normal intraocular pressure? 13 MR. DINER: Vague. 14 BY THE WITNESS: 15 A It would depend on a specific situation. 16 BY MR. FREDERICKSON: 17 Q Okay. So there are instances that a 18 person of ordinary skill in the art would be 19 concerned about lowering intraocular pressure by 20 administer -- below normal intraocular pressure by 21 administering brimonidine? 22 A Well, when we quote the normal range, it's	127 1 A Could you read back the question or parts 2 of the question? 3 MR. FREDERICKSON: Would you be able to 4 read back the question? 5 (WHEREUPON, the record was 6 read by the reporter.) 7 BY MR. FREDERICKSON: 8 Q And you said, Dr. Noecker, there were 9 things that you agreed with and didn't agree with 10 in that statement? 11 A I guess the first thing is it's not 12 possible for brimonidine to lower it to a 13 problematic IOP, eye pressure. 14 Q Okay. I'm sorry. What is not possible to 15 lower -- 16 A Make the eye pressure too low with 17 brimonidine. 18 Q So just to make sure I understand, is it 19 or is it not possible to make eye pressure too low 20 with brimonidine? 21 A No. 22 Q That's because there is a natural
126 1 a statistical range. 2 Q What does that mean? 3 A That what's normal for one person may -- 4 it's the statistical range that you find eye 5 pressures, but there's always outliers. You could 6 be completely healthy. 7 Q Okay. So a person of ordinary skill in 8 the art evaluating the use of brimonidine who did 9 not want to lower individuals' eye pressure below 10 normal intraocular pressure would be mindful that 11 different patients may act and respond 12 differently, right? 13 MR. DINER: Objection. Vague. Incomplete 14 hypothetical. Calls for speculation. 15 BY THE WITNESS: 16 A I mean, that's -- you're ask -- I think 17 you asked a few things there, but, I mean -- so 18 parts of it I agree with, and parts of it I don't 19 agree with, so I don't know if you can break that 20 down a little bit. 21 BY MR. FREDERICKSON: 22 Q What parts do you agree with?	128 1 physiologic floor that prevents the brimonidine 2 from lowering intraocular pressure to below a 3 certain level? 4 A That's a component, but it's -- once 5 again, it's more complex. It's -- when you're 6 talking about the statistical normal range that's 7 been studied in humans and then what episcleral 8 venous pressure is in an individual, you're 9 starting to mix apples and oranges. 10 They are -- it's not that -- you're 11 linking them in a weird way. 12 Q Okay. But you pointed to the episcleral 13 venous pressure to make the point that a 14 brimonidine eyedrop would not lower intraocular 15 pressure below normal intraocular pressure, right? 16 A For that individual. 17 Q Okay. 18 MR. FREDERICKSON: Dr. Noecker, I thank 19 you for your time. I don't have any further 20 questions for you. I don't know if your counsel 21 has further questions for you, though. 22 MR. DINER: Just give us five minutes.

129 1 MR. FREDERICKSON: Okay. 2 THE VIDEOGRAPHER: I'll take us off. 3 Please stand by. 4 We're going off the record. The time is 5 6:13 p.m. 6 (WHEREUPON, a recess was had.) 7 THE VIDEOGRAPHER: Going back on the 8 record. The time is 6:16 p.m. 9 MR. DINER: Thank you very much. This is 10 Bryan Diner for Eye Therapies. We have no further 11 questions -- we have no questions for Dr. Noecker. 12 MR. FREDERICKSON: I think we can go off 13 then. 14 THE VIDEOGRAPHER: I will read us off. 15 Here ends today's deposition. We're going 16 off the record. The time is 6:16 p.m. 17 (WHEREUPON, the deposition was concluded 18 at 6:16 p.m. CST.) 19 20 21 22	131 1 I further certify that I am not related to 2 any of the parties to this action by blood or 3 marriage, I am not employed by or an attorney to 4 any of the parties to this action, and that I am 5 in no way interested, financially or otherwise, in 6 the outcome of this matter. 7 8 IN WITNESS WHEREOF, I have hereunto set 9 my hand this 20th day of February, 2025. 10 11 12 <u>Michelle M. Yohler</u> 13 Michelle M. Yohler, CSR, RMR, CRR 14 Certified Shorthand Reporter 15 CSR No.: 84-4531 16 17 18 19 20 21 22
130 1 CERTIFICATE OF SHORTHAND REPORTER 2 3 I, Michelle M. Yohler, Certified 4 Shorthand Reporter, Registered Professional 5 Reporter, Registered Merit Reporter, Certified 6 Realtime Reporter, within and for the State of 7 Illinois do hereby certify: 8 That ROBERT J. NOECKER, M.D., the witness 9 whose deposition is hereinbefore set forth, was 10 duly sworn by me before the commencement of such 11 deposition and that such deposition was taken 12 before me and is a true record of the testimony 13 given by such 14 witness. 15 I further certify that the adverse party, 16 EYE THERAPIES, was represented by counsel at the 17 deposition. 18 I further certify that the deposition of 19 ROBERT J. NOECKER, M.D., on Wednesday, 20 February 19, 2025, commencing at 3:57 p.m. CST to 21 6:16 p.m. CST. 22	

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