

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,

vs.

EYE THERAPIES, LLC,

Patent Owner.

Case No. IPR2024-00563

U.S. Patent No. 11,596,600

Case No. IPR2024-00467

U.S. Patent No. 11,833,245

DEPOSITION OF ANTHONY M. MASZTAK

FRIDAY, APRIL 4, 2025

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1 Video-recorded deposition of ANTHONY M. 2 MASZTAK, taken remotely, before Patricia R. 3 Frank, Registered Merit Reporter, Certified 4 Realtime Reporter, and Notary Public in and for 5 the Commonwealth of Pennsylvania, commencing at 6 9:01 a.m. EST, on Friday, April 4, 2025. 7 8 --- 9 10 11 12 13 14 15 16 17 18 19 20 21 22	4 I N D E X 1 2 3 Witness Page 4 ANTHONY M. MASZTAK 5 By Mr. O'Quinn 8 6 7 E X H I B I T S 8 (Exhibits attached to transcript 9 in hard copy format and/or electronically.) 10 11 Marked for I.D. Page 12 13 Exhibit 1 Expert Declaration of Anthony 12 14 M. Masztak in Support of 15 Petitioners' Reply - 16 IPR2024-00467 17 Exhibit 2 March 28, 2025 e-mail chain, 14 18 2 pgs. 19 20 Exhibit 3 Expert Declaration of Ivan T. 15 21 Hofmann in Support of 22 Petitioners' Reply - IPR2024-00467 Exhibit 4 Mr. Masztak's Curriculum Vitae 20 Exhibit 5 U.S. Patent No. 11,833,245 40 (Exhibits cont'd. on next page)
3 1 A P P E A R A N C E S: 2 (All parties appearing remotely) 3 4 ATTORNEYS FOR THE PETITIONERS AND THE WITNESS: 5 GOODWIN PROCTER LLP 6 BY: LINNEA P. CIPRIANO, ESQUIRE 7 The New York Times Building 8 620 Eighth Avenue 9 New York, NY 10018 10 212.813.8800 11 lcipriano@goodwinlaw.com 12 13 ATTORNEYS FOR THE PATENT OWNER EYE THERAPIES, LLC, 14 AND BAUSCH & LOMB: 15 FINNEGAN, HENDERSON, FARABOW, 16 GARRETT & DUNNER, LLP 17 BY: RYAN P. O'QUINN, Ph.D. 18 1875 Explorer Street 19 Suite 800 20 Reston, VA 20190-6023 21 571.203.2700 22 roquinnr@finnegan.com FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP BY: SHANNON M. PATRICK, ESQUIRE 271 17th Street, NW Suite 1400 Atlanta, GA 30363-6209 404.653.6400 shannon.patrick@finnegan.com ALSO PRESENT: APRIL CARTER, Videographer	5 1 (Exhibits cont'd.) 2 Marked for I.D. Page 3 Exhibit 6 Declaration of Anthony M. 42 4 Masztak in Support of 5 Petitioners' Reply - IPR2024-00563 6 7 Exhibit 7 Expert Declaration of Ivan T. 43 8 Hofmann in Support of 9 Petitioners' Reply - IPR2024-00563 10 Exhibit 8 U.S. Patent No. 11,596,600 46 11 Exhibit 9 Expert Declaration of Ivan T. 49 12 Hofmann in Support of 13 Petitioner Reply - 14 IPR2022-00142 re Slayback 15 Pharma v. Eye Therapies 16 Exhibit 10 U.S. Patent No. 8,293,742 50 17 Exhibit 11 Day 3 of Trial Testimony in the 89 18 Heron Therapeutics v. Fresenius 19 Kabi USA matter 20 Exhibit 12 Findings of Fact and 101 21 Conclusions of Law in Heron 22 Therapeutics versus Fresenius Kabi USA, LLC Exhibit 13 Paper 74 entered January 19, 111 2021 in the PTAB proceeding IPR2019-1313 between Nevro Corp., Petitioner, v. Boston Scientific Neuromodulation Corp., Patent Owner (Exhibits cont'd. on next page)

6 1 (Exhibits cont'd.) 2 Marked for I.D. Page 3 Exhibit 14 Paper 58 entered February 25, 113 4 2025 in the PTAB proceeding 5 IPR2024-00467 between Dr. 6 Reddy's Laboratories S.A. and 7 Dr. Reddy's Laboratories, Inc. 8 Petitioners, v. Eye Therapies, 9 LLC, Patent Owner 10 Exhibit 15 Deposition of Ivan T. Hofmann 132 11 taken on July 14, 2017 12 13 Exhibit 16 Declaration of John C. Jarosz - 180 14 IPR2022-00142 15 Exhibit 17 Declaration of John C. Jarosz - 183 16 IPR2024-00467 17 18 --- 19 20 (REPORTER'S NOTE: All quotations 21 from exhibits are reflected in the manner in 22 which they were read into the record and do not necessarily denote an exact quote from the document.)	8 1 patent owner, Eye Therapies, as well as 2 Bausch & Lomb. Also with me today from 3 Finnegan is Shannon Patrick. 4 MS. CIPRIANO: I am Linnea 5 Cipriano from Goodwin. I'm representing the 6 Dr. Reddy's petitioners and the witness. 7 8 --- 9 ANTHONY M. MASZTAK, 10 having been duly sworn, was examined and 11 testified as follows: 12 BY MR. O'QUINN: 13 Q. Good morning, sir. 14 A. Good morning. 15 Q. Could you please state your 16 name and business address for the record. 17 A. Anthony Masztak, and business 18 address is 420 Fort Duquesne Boulevard, 19 Pittsburgh, Pennsylvania, 15222. 20 Q. Have you been deposed before, 21 Mr. Masztak? 22 A. I have. Q. Approximately how many times?
7 1 THE VIDEOGRAPHER: We are now 2 on the record. Here begins Volume 1, Clip 1, 3 in the video deposition of Anthony Masztak 4 taken in the matter of Dr. Reddy's 5 Laboratories S.A. and Dr. Reddy's 6 Laboratories, Inc., Petitioners, versus Eye 7 Therapies, LLC IPR in the U.S. Patent and 8 Trademark Office, Case Number IPR 2024-00467 9 and IPR 2024-00563. 10 Today's date is April 4, 2025. 11 The time on the video monitor is 9:01 a.m. 12 This deposition is being held remotely. The 13 court reporter is Patty Frank on behalf of 14 Henderson Legal Services. The video camera 15 operator is April Carter on behalf of 16 Henderson Legal Services. 17 Will counsel please introduce 18 themselves and state whom they represent 19 beginning with the parties noticing the 20 deposition. 21 MR. O'QUINN: My name is Ryan 22 O'Quinn from Finnegan LLP representing the	9 1 A. I think it's about six times, I 2 think. I'd have to look at my list to 3 confirm, but I think it's about six. 4 Q. Have you been deposed or 5 otherwise given testimony before in an inter 6 partes review proceeding like these before 7 the U.S. Patent Office Patent Trial and 8 Appeal Board? 9 A. I have not in an IPR. I've 10 worked on numerous engagements related to 11 IPRs where another individual at Gleason IP 12 would have given the testimony, but I've 13 been -- not been deposed in an IPR proceeding 14 previously. 15 Q. Fair enough. So let's do a 16 couple of ground rules before we get started. 17 I'm sure your counsel has gone through these. 18 But you understand that the testimony you're 19 giving today is under oath just like you were 20 in a courtroom, right? 21 A. Correct. 22 Q. And do you understand that the

10 1 testimony you're providing today is 2 cross-examination that can be submitted to 3 the Patent Trial and Appeal Board? 4 A. I do. 5 Q. I plan to take a break roughly 6 once an hour, but you're welcome to take a 7 break at other times if you need it. I just 8 ask that you answer any question that is 9 pending before the break. Is that fair? 10 A. That is. 11 Q. If you answer one of the 12 questions that I ask today, I will assume 13 that you understood that question. Is that 14 fair? 15 A. That is. 16 Q. Now, Ms. Cipriano may object 17 from time to time today, but unless you are 18 specifically instructed by her not to answer 19 a particular question, you'll need to answer 20 each question you are asked. Is that fair? 21 A. Yes. 22 Q. Is there any reason, medical or	12 1 Stand by. 2 (Exhibit 1 marked for 3 identification.) 4 BY MR. O'QUINN: 5 Q. This proceeding involves 6 U.S. Patent No. 11,833,245. 7 Do you see that, Mr. Masztak? 8 A. I do. 9 Q. And is this your declaration 10 for IPR 2024-467? 11 A. It is, yes. 12 Q. And for all of our exhibits 13 today, you should have access to the 14 documents yourself if you want to download 15 them and review them further, but we'll also 16 go through them on the screen. 17 Do you have any documents in 18 front of you right now? 19 A. I do have a clean copy of the 20 document on the screen, the '245 patent 21 declaration, and the '600 patent declaration 22 of my own, as well as Mr. Jarosz' declaration
11 1 otherwise, that you can't give complete, 2 accurate, and truthful answers to my 3 questions today? 4 A. There is not. 5 Q. Where do you work, Mr. Masztak? 6 A. Gleason IP. 7 Q. And what's your job title at 8 Gleason? 9 A. I'm a managing director and a 10 co-leader of the intellectual property 11 practice. 12 MR. O'QUINN: Let's go ahead 13 and introduce our first exhibit. I'm going 14 to introduce as Masztak Exhibit 1 15 Exhibit 1203 from IPR 2024-467. I'll move it 16 over into the public folder. It looks like I 17 can't do that, but the file name -- 18 THE VIDEOGRAPHER: I can do it. 19 Yes, go ahead. File name I was going to ask. 20 MR. O'QUINN: File name is "245 21 Exhibit 1203" is how it begins. 22 THE VIDEOGRAPHER: All right.	13 1 for the '245 patent and the '600 patent, all 2 clean copies. 3 Q. Okay. Feel free to use those 4 as well if it makes it easier. 5 Is this your report -- I 6 already asked you that. Sorry. 7 MR. O'QUINN: Can we go to PDF 8 page 59, please. Let's see. The pagination 9 must have gotten lost. One second. 10 THE VIDEOGRAPHER: Sorry. 11 Maybe that's not actually the 59 you meant. 12 MR. O'QUINN: Yes. Let's look 13 at page 51. It's PDF page 61. Thank you. 14 That one right there. That one right there. 15 BY MR. O'QUINN: 16 Q. Is that your signature, 17 Mr. Masztak? 18 A. That is. 19 Q. And it's dated March 31, 2025, 20 correct? 21 A. That is correct. 22 MR. O'QUINN: I'd like to go

14 1 ahead and introduce as Masztak Exhibit 2 the 2 document with the file name "Exhibit 3005," 3 please. 4 (Exhibit 2 marked for 5 identification.) 6 BY MR. O'QUINN: 7 Q. This is from the 467 IPR 8 proceeding and it's Exhibit 3005 in that 9 proceeding. 10 Do you understand, Mr. Masztak, 11 that you're appearing as a substitute for 12 Mr. Ivan Hofmann in these proceedings? 13 A. I do. 14 Q. If we go to page 2 of this 15 document, about five lines down there's a 16 sentence that begins "Mr. Masztak, who worked 17 with Mr. Hofmann on his analysis of the 18 issues in these proceedings, has agreed to 19 adopt the opinions set forth in Mr. Hofmann's 20 declarations and sit for deposition." 21 Do you see that? 22 A. I do.	16 1 identification.) 2 BY MR. O'QUINN: 3 Q. This is Exhibit 1162 from the 4 467 IPR proceeding, which is the February 25, 5 2025 Expert Declaration of Ivan T. Hofmann in 6 Support of Petitioners' Reply. And have you 7 seen this document before, Mr. Masztak? 8 A. I have. 9 Q. Is this declaration of 10 Mr. Hofmann in fact identical in every way to 11 your declaration, Exhibit 1, except for your 12 name and your qualifications replacing those 13 of Mr. Hofmann? 14 A. Yes, except for certain 15 sentences that were phrased in Ivan's first 16 person that we did slightly change I remember 17 on the one footnote; but, substance, all of 18 the information is identical. 19 Q. Did you have a role in 20 preparing Mr. Hofmann's February 25 21 declaration, Exhibit 3 here? 22 A. Yes. I was the lead managing
15 1 Q. And that's a true statement to 2 your understanding? 3 A. That is. 4 Q. What does "worked with 5 Mr. Hofmann" mean in this context? 6 A. I was the lead managing 7 director on these engagements for the '245 8 and the '600 patent where Mr. Hofmann was the 9 testifying witness originally on the case. 10 Q. And so in agreeing to adopt his 11 opinions, there is no difference between the 12 opinions you're presenting in these 13 proceedings and the opinions that Mr. Hofmann 14 presented? 15 A. That is correct. Outside wrong 16 qualifications. 17 Q. Understood. 18 MR. O'QUINN: We can put that 19 aside. I'd like to pull as Exhibit 3 to the 20 deposition the document with file name "245 21 Exhibit 1162," please. 22 (Exhibit 3 marked for	17 1 director on the case. I worked on the 2 engagement, drafting the declaration in 3 conjunction with Mr. Hofmann in forming the 4 opinions that are included in that 5 declaration as well as my declaration. 6 Q. Were you the primary drafter of 7 both declarations? 8 A. I was. 9 MR. O'QUINN: If we could 10 switch back to Exhibit 1, which is 11 Mr. Masztak's declaration. If we could just 12 go down a page from where we are right now. 13 BY MR. O'QUINN: 14 Q. This is Appendix 1 of your 15 declaration for the '245 patent, Mr. Masztak. 16 Do you see that? 17 A. I do. 18 Q. Did you prepare Appendix 1 19 yourself? 20 A. Me in conjunction with my team 21 that worked on the engagement. 22 Q. Have you personally reviewed

18 1 each and every document listed in Appendix 1? 2 A. I believe I have. If I didn't, 3 my team directly did, but I believe I've 4 reviewed these documents, yes. 5 Q. In their entirety? 6 A. Myself or my team would have, 7 yes. 8 Q. What was the process involved 9 in preparing your declaration in the '245 10 patent case, Exhibit 1? 11 A. Preparing the initial opinions 12 which were included in the Hofmann 13 declaration or those that are included in my 14 declaration that was issued on March 31? 15 Q. The latter. 16 A. So we started with the Hofmann 17 declaration and made certain adjustments as 18 needed with the qualifications section, 19 reviewing to make sure there was no other 20 terminology pronouns really that mattered. 21 In conjunction with that, billing rates were 22 adjusted for my rate as opposed to	20 1 (Exhibit 4 marked for 2 identification.) 3 THE VIDEOGRAPHER: One moment 4 on the shared page. It's in the shared 5 folder, though. 6 BY MR. O'QUINN: 7 Q. And, Mr. Masztak, is this your 8 curriculum vitae? 9 A. It appears to be, yes. 10 Q. And this is from -- this is the 11 Exhibit 1202 from the 467 IPR proceeding 12 which was submitted with your declaration. 13 Feel free to download it, review it if you 14 need to, but is this CV as it was submitted 15 complete and accurate as of today? 16 A. I do not have anything in my 17 download -- able to be downloaded box just so 18 you're aware. 19 Q. Okay. I'm not sure why that is 20 the case but -- 21 MS. CIPRIANO: I think if you 22 refresh the page.
19 1 Mr. Hofmann's rate. 2 Q. Did you speak with Mr. Hofmann 3 in the course of preparing your declaration? 4 A. I did not. 5 Q. Do you know approximately when 6 you learned that you were going to be 7 submitting a declaration in this matter? 8 A. It would have been about a week 9 or so, week and a half before -- about a 10 week, probably, before submitting the 11 declaration. 12 Q. Is there anything in this 13 declaration that you do disagree with 14 Mr. Hofmann on that you are adopting 15 regardless? 16 A. There is not. 17 MR. O'QUINN: Okay. We can put 18 that aside for the moment. We'll come back 19 to it frequently. 20 I'd like to introduce as 21 Masztak Exhibit 4 the document with the file 22 name "245 Exhibit 1202," please.	21 1 MR. O'QUINN: Yeah, that may do 2 it. 3 THE WITNESS: Okay. 4 MR. O'QUINN: Thank you. 5 THE WITNESS: Yep. Thank you. 6 BY MR. O'QUINN: 7 Q. So if you want to open 8 Exhibit 1202, the file name, that's the 9 document we're looking at if you want to look 10 at it separately. 11 A. This is my current CV and list 12 of experience. 13 Q. Is there anything that should 14 be added or taken off of this CV? 15 A. No. 16 Q. You have no publications, 17 correct? 18 A. That is correct. 19 Q. You have never taught in a 20 university or academic setting, correct? 21 A. Not in a university setting. I 22 have provided CPE to a number of law firms

22 1 and organizations at various times in my 2 career. 3 Q. And just for the record, what 4 does CPE stand for? 5 A. That's continuing professional 6 education. 7 Q. Have you held any university 8 appointments? 9 A. I have not. 10 Q. You are a certified public 11 accountant, correct? 12 A. That is correct. 13 Q. And is that in the state of 14 Pennsylvania? 15 A. Yes. 16 Q. Any other states? 17 A. No. 18 Q. Is that certification current? 19 A. Yes. 20 Q. Has your certification as a CPA 21 ever lapsed or been suspended? 22 A. No.	24 1 Q. You're not an optometrist, 2 correct? 3 A. Correct. 4 Q. You've never treated any 5 patients in your professional career, 6 correct? 7 A. That is correct. 8 Q. Have you ever worked at a 9 pharmaceutical company? 10 A. I have not. 11 Q. Do you consider yourself an 12 expert in advertising, promotion, or 13 marketing? 14 A. Not in those fields. I work 15 with that information frequently dealing with 16 pharmaceutical economics and the issues of 17 commercial success and nexus, but I would not 18 consider an expert in marketing. 19 Q. You've never worked on a 20 marketing campaign yourself for any product, 21 correct? 22 A. That is correct.
23 1 Q. You have a bachelor's degree in 2 business administration with a concentration 3 in accounting from Duquesne, correct? 4 A. That is correct. 5 Q. Is that your only educational 6 degree from a university post high school? 7 A. That is correct. 8 Q. You have some other 9 certifications that are listed here in this 10 exhibit, correct? 11 A. Yes. 12 Q. You're not a scientist; is that 13 fair? 14 A. I am not. 15 Q. You do not consider yourself a 16 person of ordinary skill in the science that 17 is at issue in these proceedings; would you 18 agree? 19 A. I am not. 20 Q. You're not a medical doctor, 21 correct? 22 A. Correct.	25 1 Q. Do you consider yourself a drug 2 formulator? 3 A. I am not. 4 Q. Could we go to page 2 of this 5 document. 6 So the first two-thirds or so 7 of this page, this is the sum total of your 8 personal testifying experience to date; is 9 that correct? 10 A. That's correct. 11 Q. And so let's just go through 12 these quickly. 13 The Ingenus Pharmaceuticals 14 versus Nexus Pharmaceuticals case, that's the 15 Northern District of Illinois, correct? 16 A. Yes. 17 Q. What was the -- I'm not asking 18 for any confidential information. What was 19 your role in that case? 20 A. It related to the drug 21 aprepitant -- or, I'm sorry -- the 22 cyclophosphamide and related to commercial

26 1 success and nexus. 2 Q. The second case there is Heron 3 Therapeutics, Inc. versus Fresenius Kabi USA, 4 District of Delaware. Again, not revealing 5 confidential information, what was your role 6 in that case? 7 A. That related to the product 8 aprepitant and was related to commercial 9 success and nexus. 10 Q. And is -- the other Heron 11 matter listed forth there, is that the same 12 proceeding? 13 A. That is. 14 Q. Okay. How about the Galderma 15 versus TCD -- or, sorry -- Galderma versus 16 Lupin case, District of Delaware, what was 17 your role there? 18 A. That related to preliminary 19 injunction proceedings in the product 20 doxycycline. 21 Q. Is the Ingenus case, the first 22 listed case, resolved?	28 1 case listed here been resolved? 2 A. That -- the preliminary 3 injunction proceeding part of it was, yes. 4 Q. What was the outcome of that? 5 A. There was not a preliminary 6 injunction put in place. 7 Q. There are a couple of other 8 engagements listed here. None of those are 9 pharmaceutical patent cases, correct? 10 A. That is correct. 11 Q. Below this list of proceedings, 12 the next heading says "Intellectual Property 13 Cases" -- excuse me -- "in which Mr. Masztak 14 Led the Engagement." 15 Do you see that? 16 A. I do. 17 Q. Can you explain for the record 18 what "led the engagements" means? 19 A. For these engagements, I was 20 the managing director that was in control of 21 the engagement, managing the arguments, the 22 documents, the drafting of the reports in the
27 1 A. It currently is not. 2 Q. Has it gone to trial yet? 3 A. It has not. 4 Q. When do you expect it to go to 5 trial, if you know? 6 A. It's currently scheduled for 7 June of 2025. 8 Q. The Heron case has gone to 9 trial, correct, as indicated here? 10 A. That is correct. 11 Q. What was the outcome of that 12 case? 13 MS. CIPRIANO: Objection. 14 Relevance. 15 THE WITNESS: I would have to 16 pull the opinion. I know it is currently on 17 appeal and the outcome was in favor of Heron; 18 but the details of the decision, I would have 19 to refresh my recollection on exactly what 20 the decision was in favor of Heron. 21 BY MR. O'QUINN: 22 Q. Has the Galderma versus Lupin	29 1 matter, in conjunction with the testifying 2 expert in the case, which was not myself in 3 those cases. 4 Q. Would you say your role was 5 pretty consistent in each of those 6 engagements, or did it differ from case to 7 case? 8 A. It was fairly consistent as the 9 main contact person with counsel and in 10 developing the opinions for the cases in 11 conjunction with the testifying expert. 12 Q. Are you providing any technical 13 opinions whatsoever in the IPR proceedings 14 we're here for today? 15 A. Can you -- what do you mean by 16 "technical opinions"? 17 Q. Are you opining at all about 18 any of the science involved in these IPRs? 19 A. I am not. 20 Q. Is it safe to say anywhere 21 there is technical or scientific information 22 or opinions in your report you are solely

30 1 relying on another expert? 2 A. I would think that's probably a 3 reasonable opinion related to the opinions of 4 Dr. Galanis or Dr. Laskar in the -- that are 5 referenced in my declarations. 6 Q. Since you became the testifying 7 expert in these proceedings, have you spoken 8 with Dr. Galanis? 9 A. I have not. 10 Q. Did you speak with Dr. Galanis 11 before then? 12 A. I did not. 13 Q. Since you became the testifying 14 expert in these proceedings, have you spoken 15 with Dr. Laskar? 16 A. I have not. 17 Q. Did you speak with Dr. Laskar 18 before then? 19 A. I did not. 20 Q. Do you know whether Mr. Hofmann 21 spoke directly with either expert? 22 A. I do not believe he did.	32 1 A. I don't believe so. 2 Q. Let's look back at your CV now 3 on the screen. If we go to PDF page 4, 4 please. Sorry. The same document that was 5 on the screen previously. Thank you. Okay. 6 That's great. 7 The fifth case down on this 8 page is Allergan Sales, LLC and Allergan, 9 Inc. versus Sandoz, Inc. and Alcon 10 Laboratories, Inc. in the United States 11 District Court for the District of New 12 Jersey. 13 Do you see that? 14 A. I do. 15 Q. And that case related to 16 brimonidine tartrate-timolol maleate, 17 correct? 18 A. That is correct. 19 Q. The trade name for that drug is 20 Alphagan, correct? 21 A. I believe that was related to 22 Combigan.
31 1 Q. Did you review drafts of 2 Dr. Galanis' declarations in this matter? 3 A. I did not. 4 Q. Do you know if Dr. Hofmann 5 did -- sorry -- Mr. Hofmann? 6 A. I do not believe he did. 7 Q. Did you review drafts of 8 Dr. Laskar's declarations in this matter? 9 A. I did not. 10 Q. Do you know if Dr. Hofmann did? 11 A. I do not believe he did. 12 Q. Did you or Dr. Hofmann submit 13 any questions for Dr. Galanis? 14 A. Submit questions to who? 15 Q. Did you or Mr. Hofmann have any 16 technical questions for Dr. Galanis that you 17 asked counsel to pass to Dr. Galanis? 18 A. I don't believe we did, no. 19 Q. And same question for 20 Dr. Laskar. Did you or Mr. Hofmann have any 21 technical questions for Dr. Laskar that you 22 asked counsel to pass on to him?	33 1 Q. Combigan. Thank you. 2 Did you assist Mr. Hofmann on 3 that case or another expert at Gleason? 4 A. That was Mr. Hofmann. 5 Q. And you represented Sandoz and 6 Alcon in that matter? 7 A. I would have to go 8 double-check. I know we represented Alcon. 9 I don't remember if it was a joint defense 10 group with both of them or not. 11 Q. And you led the engagement in 12 this case, the Allergan/Alcon case, correct? 13 A. That is correct. 14 Q. Do you believe your experience 15 leading the engagement in that case makes you 16 an expert in products containing brimonidine 17 tartrate as an active ingredient? 18 MS. CIPRIANO: Objection. 19 Relevance. 20 THE WITNESS: I don't believe 21 I've thought about it in that way of being an 22 expert in a specific compound. I work on a

34 1 number of cases with a variety of compounds 2 and indications in different -- in the 3 pharmaceutical industry and consider myself 4 an expert in pharmaceutical economics and 5 understanding the economics of pharmaceutical 6 products. 7 BY MR. O'QUINN: 8 Q. Are you an expert in the 9 pharmaceutical economics of products that 10 contain brimonidine? 11 A. I don't know that I've ever 12 thought of it in that manner. I have worked 13 on cases, as we're looking at here, that -- 14 for a product that contained brimonidine, as 15 well as the current matters at hand in the 16 IPRs for the '600 patent and the '245 patent, 17 and I previously worked on the IPR related to 18 the '742 patent as well. 19 Q. You understand that brimonidine 20 tartrate is the active ingredient in Bausch & 21 Lomb's Lumify product which is at the base of 22 these proceedings?	36 1 as we sit here today. 2 BY MR. O'QUINN: 3 Q. Is it fair to say that the 4 majority of the time when you're involved in 5 a pharmaceutical litigation you're being 6 retained on behalf of generic pharmaceutical 7 companies? 8 A. I don't -- I mean, it depends. 9 I haven't categorized it in that manner. We 10 have been retained by patent owners and by 11 patent challengers throughout time. There 12 may be -- I look at the list, there's maybe 13 more on the side of patent challengers, but 14 we've worked for both parties. 15 Q. And I guess the reason I'm 16 asking is the way the CV is presented it's 17 not clear what party you represented in each 18 engagement, and so I just wanted to try to 19 clear up if you were typically on the generic 20 side or the brand side in cases like these. 21 A. I'm sorry. Was that a 22 question? Can you repeat that? I thought it
35 1 A. I understand that brimonidine 2 is contained in the Lumify product. 3 Q. Do you consider Combigan and 4 Lumify to be part of the same marketplace? 5 MS. CIPRIANO: Objection. 6 Outside the scope of the declaration. 7 THE WITNESS: I would not 8 consider them as part of that. They both 9 contain brimonidine, but I believe they are 10 used for different indications. If you have 11 the label for Combigan -- I haven't looked at 12 that case since 2021 -- I could -- we could 13 look at that and see, but I'm not sure as I 14 sit here right now that those would be direct 15 competitors, so to speak. 16 BY MR. O'QUINN: 17 Q. Sitting here today, do you 18 recall what concentration the brimonidine 19 tartrate solution in Combigan was? 20 MS. CIPRIANO: Objection. 21 Outside the scope. 22 THE WITNESS: I do not recall	37 1 was a statement but -- 2 Q. Well, I'm just saying, the way 3 the CV is presented, it is not clear what 4 party you were representing in each of these 5 engagements, and so I just wanted to ask you 6 again, do you believe you're typically on the 7 generic side or the brand side in the 8 litigations that you manage or testify in? 9 A. I mean, brand and generic is a 10 little difficult now the way the mergers and 11 everyone has come together. I kind of -- I 12 view it more as patent owner or patent 13 challenger at times. I think there's more 14 times we're probably on the side of patent 15 challenger, but we have been retained by both 16 patent owners as well as patent challengers 17 throughout time. 18 Q. In district court litigation, 19 the patent challengers are typically generic 20 drug companies; would you agree? 21 MS. CIPRIANO: Objection. 22 Scope.

38 1 THE WITNESS: It depends how 2 you define a generic drug company, because 3 all companies now seem to have brand arms, 4 generic arms. Lots of mergers and 5 acquisitions have occurred over time. 6 BY MR. O'QUINN: 7 Q. Approximately how many times 8 have you worked with the Goodwin Procter law 9 firm? 10 A. Over a hand -- I'd say a 11 handful of times over my -- I think I'm 12 coming up on 18 years working at Gleason now. 13 They're one of the firms we work with, but we 14 work with a lot of law firms. 15 Q. You yourself are not an 16 attorney, correct? 17 A. I am not. 18 Q. You have never attended law 19 school, correct? 20 A. That is correct. 21 Q. You're not a patent agent, 22 correct?	40 1 BY MR. O'QUINN: 2 Q. This is U.S. Patent No. 3 11,833,245. Have you seen this document 4 before, Mr. Masztak? 5 A. I have. 6 Q. Have you reviewed it? 7 A. I have. 8 Q. Would you say in its entirety 9 top to bottom, every word? 10 A. I mean, generally I reviewed 11 the document. Whether I -- there's a lot of 12 technical nature and information throughout 13 the document, but I've read the document. 14 Q. Did you analyze the claims of 15 this patent as part of your work in this 16 case? 17 A. I have reviewed and read the 18 claims of the patent, yes. 19 Q. Are you opining as an expert in 20 the interpretation of patent claims related 21 to pharmaceutical formulations? 22 A. I am not interpreting the
39 1 A. That is correct. 2 Q. Are you an inventor yourself on 3 any patents or patent applications? 4 A. I am not. 5 Q. You have not analyzed which 6 patents cover the Lumify product; is that 7 fair? 8 A. I have not analyzed that from a 9 technical perspective, no. 10 Q. Fair to say you don't have an 11 opinion as to which claims of any particular 12 patent cover the Lumify product, right? 13 A. I do not have a direct opinion 14 on the technical nature of which claims cover 15 Lumify. 16 MR. O'QUINN: We can put that 17 document down. I'd like to introduce a new 18 exhibit which will be Masztak Exhibit 5, and 19 the file name there that I want to use is 20 "Exhibit 1001 (245 Patent)." 21 (Exhibit 5 marked for 22 identification.)	41 1 claims or any type of claim construction 2 related to the claims of the '245 patent. 3 Q. Do you consider yourself an 4 expert in interpreting patent claims related 5 to clinical features of pharmaceutical 6 formulations? 7 A. I do not consider myself an 8 expert in clinical features of the patent 9 claims. I rely on technical experts for 10 understandings related to patent claims and 11 potential features related to products that 12 are claimed to embody such claims. 13 Q. Anywhere in your declarations 14 where you discuss patent claims or legal 15 standards, you were given that information by 16 counsel, correct? 17 A. I would -- or I have reference 18 and reliance on Dr. Galanis or Dr. Laskar for 19 such technical information that may be 20 included in the declarations. 21 Q. What were you asked to do in 22 these proceedings?

42 1 A. To review and respond to the 2 opinions put forth by Mr. Jarosz. 3 Q. Is there any difference between 4 what you were asked to do in this case and 5 what Mr. Hofmann was asked to do in this 6 case? 7 A. There is not. 8 MR. O'QUINN: I'd like to 9 introduce as the next exhibit the document 10 that begins 600 Exhibit 1203, please. 11 (Exhibit 6 marked for 12 identification.) 13 BY MR. O'QUINN: 14 Q. Mr. Masztak, this is a document 15 entitled "Expert Declaration of Anthony M. 16 Masztak in Support of Petitioners' Reply." 17 It's for IPR 2024-563 involving U.S. Patent 18 No. 11,596,600. 19 Do you see that? 20 A. I do see that on the cover page 21 here, yes. 22 Q. And, again, you're welcome to	44 1 way to your declaration in the same 2 proceeding, which is Exhibit 6, except for 3 your name, qualifications, and changing some 4 pronouns? 5 A. Can you scroll down just so I 6 can see the title of the document? Thank 7 you. 8 Yes, that would be correct. 9 Q. Was your role in the 10 preparation of this declaration that we're 11 looking at now on the screen the same as your 12 role in the preparation of Mr. Hofmann's 13 other declaration? 14 A. That is correct. The other 15 declaration being the '245 patent 16 declaration, yes. 17 Q. And if we go back to your 18 declaration now. We can take this one down. 19 So Exhibit 6. And if we go to the next page, 20 we have here Appendix 1 to your declaration. 21 Did you prepare this appendix? 22 A. Yes. Myself and the team that
43 1 use the hard copy you have in front of you. 2 Is this your full and complete 3 declaration for the 563 IPR proceeding? 4 A. I believe it is, yes. 5 Q. And if we could go to PDF 6 page 60 of this document, is that your 7 signature, Mr. Masztak? Sorry. Back where 8 we were. Right there. 9 A. Yes, that is. 10 MR. O'QUINN: And if we could 11 bring in now as Exhibit 7 the document that 12 begins with the file name "600 Exhibit 1162," 13 please. 14 (Exhibit 7 marked for 15 identification.) 16 BY MR. O'QUINN: 17 Q. And this is the February 25, 18 2025 Expert Declaration of Ivan T. Hofmann in 19 Support of Petitioners' Reply. I just want 20 to ask you some of the same questions again. 21 Mr. Masztak, is this 22 declaration of Mr. Hofmann identical in every	45 1 I work with on the case would have prepared 2 it. 3 Q. And have you personally 4 reviewed each and every document listed in 5 this appendix? 6 A. Myself and/or the team that 7 worked on the case, yes. 8 Q. When you're saying "the team," 9 who are you referring to? 10 A. The primary other individual is 11 a senior manager at Gleason IP is named Alex 12 Dimitri, D-I-M-I-T-R-I. 13 Q. Do you know which documents on 14 this appendix you reviewed versus 15 Mr. Dimitri? 16 A. I believe I reviewed all of 17 them. There's a chance there is a document 18 that he may have reviewed that I hadn't seen 19 or something of that nature, but the majority 20 we have collaborated on the engagement, and I 21 would have reviewed these documents. 22 Q. Were there any differences in

46 1 how the declaration for the '600 patent 2 proceeding came together versus the '245? 3 A. There -- they were put together 4 in the same manner and in the same analysis. 5 There were certain adjustments and 6 differences between the two, but primarily 7 it's under the same concept, similar to how 8 Mr. Jarosz approached his analysis. 9 MR. O'QUINN: We can take that 10 down again. The next document I'd like to 11 look at will be Exhibit 8, and the file name 12 is "Exhibit 1001 - U.S. Patent No. 13 11,596,600." 14 (Exhibit 8 marked for 15 identification.) 16 BY MR. O'QUINN: 17 Q. Have you reviewed the '600 18 patent that we see here, Mr. Masztak? 19 A. I have. 20 Q. Did you analyze the claims of 21 the '600 patent as part of your work in this 22 case?	48 1 MS. CIPRIANO: Objection. 2 Relevance. Scope. 3 THE WITNESS: I understand that 4 Dr. Reddy's has rights to an ANDA related to 5 the Lumify product. 6 BY MR. O'QUINN: 7 Q. A couple times today you've 8 mentioned the '742 patent. Is that another 9 Eye Therapies patent that is involved in the 10 dispute between petitioners and patent owner? 11 MS. CIPRIANO: Same objections. 12 THE WITNESS: My understanding 13 is the '742 patent is another patent where 14 there was a previous IPR that was -- it was 15 Slayback at the time would have challenge -- 16 that's petitioner for Eye Therapies in the 17 '742 patent was determined by the PTAB to be 18 invalid. 19 MR. O'QUINN: I'd like to 20 introduce as Exhibit 9 the document from the 21 folder that has the file name "Exhibit 1047," 22 please.
47 1 A. I reviewed and read the claims 2 of the '600 patent, not from a technical 3 perspective but from the purpose of 4 understanding the claims for this case. 5 Q. Is it your understanding that 6 Dr. Reddy's has filed inter partes review or 7 IPR petitions challenging the validity of the 8 '245 and '600 patents? 9 A. My understanding, that there 10 are certain challenged claims of each '245 11 and '600 patents that have been instituted 12 based on Dr. Reddy's as the petitioner filing 13 of these inter partes reviews. 14 Q. And both of those patents are 15 assigned to Eye Therapies, LLC; is that your 16 understanding? 17 A. That is my understanding, yes. 18 Q. And do you understand that 19 Dr. Reddy's filed those petitions challenging 20 the claims of those patents because 21 Dr. Reddy's seeks to make a generic version 22 of Bausch & Lomb's Lumify product?	49 1 (Exhibit 9 marked for 2 identification.) 3 MR. O'QUINN: If you could 4 scroll -- that should be fine. 5 BY MR. O'QUINN: 6 Q. And so this is Exhibit 1047 7 from the proceeding IPR 2022-142 between 8 Slayback Pharma LLC as the petitioner, Eye 9 Therapies, LLC as the patent owner, involving 10 U.S. Patent No. 8,293,742, correct? 11 A. That is correct. 12 Q. Have you seen this document 13 before, Mr. Masztak? 14 A. I have. 15 Q. And this is the Expert 16 Declaration of Ivan T. Hofmann in Support of 17 Petitioner's Reply. 18 Did you have a role in drafting 19 this declaration? 20 A. I did. I was the lead managing 21 director on the engagement to which Ivan 22 Hofmann was the testifying expert for the

50 1 case. 2 Q. Was your role in the IPR 3 2022-142 matter similar to your role as 4 managing director in the two proceedings 5 we're here for today? 6 A. Yes, the role was similar prior 7 to being inserted now as the testifying 8 expert for the '245 patent and '600 patent. 9 MR. O'QUINN: If we could pull 10 in now the document beginning with file name 11 "Exhibit 1002." This will be Exhibit 10. 12 (Exhibit 10 marked for 13 identification.) 14 BY MR. O'QUINN: 15 Q. Exhibit 10 is Exhibit 1002 from 16 the 563 IPR which is a copy of U.S. Patent 17 No. 8,293,742. 18 Have you seen this patent 19 before, Mr. Masztak? 20 A. I have. 21 Q. Have you reviewed this patent? 22 A. I have reviewed this patent.	52 1 Q. And I think, as you testified a 2 moment ago, the Patent Trial and Appeal Board 3 has for now found that the claims that were 4 challenged in the '742 patent were invalid as 5 obvious, correct? 6 A. That's my understanding based 7 on the opinion from the Patent Trial and 8 Appeal Board. 9 Q. Did you review that opinion? 10 A. I did. 11 Q. And as you mentioned, you 12 understand that decision is being appealed 13 and is not yet final? 14 A. I understand it's currently 15 under appeal, yes. 16 Q. Do you believe that the issue 17 of commercial success is relevant to whether 18 the '245, '600, and '742 patents are obvious? 19 MS. CIPRIANO: Objection. 20 Calls for a legal conclusion. 21 THE WITNESS: I understand that 22 the patent owners have asserted commercial
51 1 Q. Did you review this patent in 2 preparation for today's deposition? 3 A. Not necessarily in preparation 4 for the deposition today. I had reviewed it 5 when we were compiling the declarations for 6 the '245 and '600 over a couple months ago 7 when we did so. 8 Q. And did you analyze the claims 9 of the '742 patent as part of your work in 10 this case? 11 A. I had reviewed the claims for 12 the '742 patent. 13 Q. Dr. Reddy's is claiming that 14 the '245, '600, and '742 patents are invalid 15 as obvious, correct? 16 MS. CIPRIANO: Objection. 17 Scope. 18 THE WITNESS: I would leave 19 that to legal arguments. I'm not sure 20 exactly all of their defenses related to 21 such. 22 BY MR. O'QUINN:	53 1 success and nexus related to the '245 patent 2 and '600 patent based on Mr. Jarosz' 3 opinions, and I've rebutted those opinions in 4 my declarations. 5 BY MR. O'QUINN: 6 Q. Your opinion in these 7 proceedings is that the commercial 8 performance of the Lumify product does not 9 provide objective indicia of nonobviousness, 10 correct? 11 A. The marketplace performance of 12 Lumify does not provide objective indicia of 13 nonobviousness of the challenged claims of 14 the '245 patent and '600 patent. 15 Q. And that's because, in your 16 view, there's no nexus between the commercial 17 performance of Lumify and the features 18 recited in the challenged claims, correct? 19 A. I've determined that there's no 20 nexus in the marketplace performance of 21 Lumify and the challenged claims of the '245 22 patent and the challenged claims of the '600

54 1 patent. 2 Q. You are not opining that the 3 sales and revenue and profit figures of 4 Lumify indicate a lack of commercial success, 5 right? 6 A. Commercial success is based on 7 the performance of the product in conjunction 8 with a nexus to the patent, so I've 9 determined there's not a nexus to the 10 challenged claims of the '245 patent and the 11 '600 patent. 12 Q. But your only point of 13 opposition to Mr. Jarosz' opinion is that 14 there's no nexus; you're not arguing that 15 there's not success, correct? 16 MS. CIPRIANO: Objection. 17 Compound. 18 THE WITNESS: I disagree with 19 Mr. Jarosz' opinions regarding nexus and the 20 marketplace performance of Lumify and the 21 challenged claims of the '600 patent and the 22 challenged claims of the '245 patent.	56 1 you and finds that there is in fact nexus, 2 that commercial success should be considered 3 in the obviousness analysis? 4 MS. CIPRIANO: Objection. And 5 incomplete hypothetical. 6 THE WITNESS: I think that 7 would be a legal conclusion depending on what 8 the Patent Trial and Appeal Board would 9 determine from the -- their standpoint in 10 that hypothetical situation which is counter 11 to my analysis that there's not nexus to the 12 challenged claims of the '600 patent and the 13 '245 patent. 14 BY MR. O'QUINN: 15 Q. Is it your understanding that 16 the Patent Trial and Appeal Board did not 17 find nexus between the commercial performance 18 of Lumify and the features of the challenged 19 claims of the '742 patent that we have on the 20 screen? 21 MS. CIPRIANO: Objection to the 22 extent it calls for a legal conclusion.
55 1 BY MR. O'QUINN: 2 Q. If the Patent Trial and Appeal 3 Board were to find that there is in fact 4 nexus between the commercial performance of 5 Lumify and the features of the challenged 6 claims, you agree that commercial success 7 would be a factor that should then be 8 considered by the board in these matters, 9 correct? 10 MS. CIPRIANO: Objection. 11 Incomplete hypothetical. 12 THE WITNESS: My analysis has 13 determined that the marketplace performance 14 of Lumify, there is not a nexus to the 15 challenged claims of the '600 patent and the 16 '245 patent. I have not seen evidence that 17 that is the case. 18 BY MR. O'QUINN: 19 Q. I understand, and I'm asking 20 you a slightly different question. 21 Would you agree that if the 22 Patent Trial and Appeal Board disagrees with	57 1 THE WITNESS: My understanding 2 is the Patent Trial and Appeal Board found 3 the '742 patent invalid and, in relation to 4 commercial success and nexus, referred to the 5 drivers of the performance of Lumify related 6 to low-dose brimonidine, which was known in 7 the prior art, as well as sales and marketing 8 efforts of Bausch & Lomb on -- for Lumify. 9 BY MR. O'QUINN: 10 Q. And so since the board did not 11 find nexus, the board did not consider 12 commercial success in the IPR proceeding for 13 the '742 patent, right? 14 MS. CIPRIANO: Objection to the 15 extent it misstates the record and calls for 16 a legal conclusion. 17 THE WITNESS: I don't know if 18 it's -- it's a decision by the PTAB what they 19 did analyze and consider related to 20 commercial success and nexus and how that 21 plays into their full opinion. My 22 understanding is that they determined that

58 1 the marketplace performance of Lumify was 2 driven by low-dose concentrations of 3 brimonidine, which were known in the prior 4 art, as well as the sales and marketing 5 efforts of Bausch & Lomb related to Lumify. 6 BY MR. O'QUINN: 7 Q. Is it fair to say your opinion 8 in these proceedings is that there is no 9 nexus between the commercial performance of 10 Lumify and the features of the '245 and '600 11 patents for the same reason that there is no 12 nexus between Lumify and the '742 patent? 13 A. I don't think that is an 14 identical comparison. I have analyzed for 15 the two challenged claims of the '245 patent 16 and the challenged claims of the '600 patent 17 and determined that the marketplace 18 performance of Lumify is not driven by the 19 challenged claims of the '245 patent or the 20 challenged claims of the '600 patent. 21 MR. O'QUINN: We've been on 22 about an hour. Why don't we take a	60 1 Maybe the exhibit numbers are off or 2 something. 3 THE VIDEOGRAPHER: All right. 4 So is that the 1001? 5 MR. O'QUINN: Yeah. This is 6 the '600 patent, but we can go with this. We 7 can go with this. 8 Okay. What I'd like to do is 9 turn to page 22 of the '600 patent and then 10 zoom in to claim 1, please. That's good. 11 And then if we could go to page 20 of the 12 '742 patent and then zoom in on claim 1 13 there, please. 14 BY MR. O'QUINN: 15 Q. Okay. Mr. Masztak, can you see 16 those? 17 A. Yes, I can. 18 Q. Is claim 1 of the '600 patent 19 identical to claim 1 of the '742 patent, 20 Mr. Masztak? 21 A. The words are not identical as 22 they're shown here. From a technical
59 1 ten-minute break. 2 THE WITNESS: Okay. 3 THE VIDEOGRAPHER: Off the 4 record at 9:57. 5 (Brief recess.) 6 THE VIDEOGRAPHER: On the 7 record at 10:07. 8 MR. O'QUINN: What I'd like to 9 do is put Masztak Exhibit 5 and Masztak 10 Exhibit 10 side by side on the screen. It's 11 the '245 patent and the '742 patent. 12 THE VIDEOGRAPHER: '245 and 13 '742, right? 14 MR. O'QUINN: Correct. 15 THE VIDEOGRAPHER: And I'll 16 zoom in to whichever one is being -- 17 MR. O'QUINN: Yeah. So can we 18 have the actual '245 patent on the left-hand 19 side. The right-hand side is good, but the 20 actual patent, which is Exhibit 5, please. 21 I'm still seeing the 22 declaration. I want the actual patent.	61 1 perspective, I would not be the one to 2 determine if they are identical from a 3 technical or practicing perspective, but the 4 words as they are listed are not identical. 5 Q. The scope of these claims with 6 respect to claim 1 is different, right? 7 MS. CIPRIANO: Objection. 8 Calls for a legal conclusion. 9 THE WITNESS: I would not be 10 the person to opine on the scope of the 11 claims here. 12 BY MR. O'QUINN: 13 Q. You have opined, however, in 14 these proceedings that the features recited 15 in each of claim 1 of the '600 patent and 16 claim 1 of the '742 patent are not novel and 17 are found in the prior art, correct? 18 MS. CIPRIANO: Objection to the 19 extent it misstates the declaration. 20 THE WITNESS: The declarations 21 I've issued in this matter are not opining on 22 the '742 patent. The declarations I've

62 1 issued for the '600 patent relate to an 2 understanding I have from Dr. Galanis and 3 Dr. Laskar in this matter for certain 4 features that are related to the information 5 in the claims, and my analysis relates to the 6 drivers of the marketplace performance of 7 Lumify related to what was known in the prior 8 art, as well as marketing, as well as 9 additional opinions I have throughout the 10 declaration. 11 BY MR. O'QUINN: 12 Q. Your understanding from 13 Dr. Galanis and Dr. Laskar is that in the 14 '600 patent an ocular drop comprising about 15 0.025 percent weight by volume brimonidine as 16 the sole active ingredient wherein the ocular 17 drop has a pH between 5.5 to 6.5 is found in 18 the prior art? 19 MS. CIPRIANO: Objection to the 20 extent it misstates the declaration. 21 THE WITNESS: My understanding 22 from Drs. Galanis and Laskar relate to the	64 1 concentration of brimonidine tartrate would 2 be a low concentration? 3 A. My understanding from 4 Dr. Galanis is that low concentrations of 5 brimonidine are known in the prior art, and 6 that is what Mr. Jarosz is putting forth as 7 the reason for efficacy, his comments related 8 to that, and the efficacy of Lumify is driven 9 by low concentrations of brimonidine that I 10 relied on by Dr. Galanis. 11 Q. Looking at claim 1 of the '742 12 patent on the right side of the screen right 13 now, claim 1 recites "wherein brimonidine is 14 present at a concentration between about 15 0.001 percent weight by volume and about 16 0.05 percent weight by volume." 17 Do you see that? 18 A. Yes, I do. 19 Q. Is it your understanding that a 20 range between 0.001 percent weight by volume 21 and about 0.05 percent weight by volume 22 constitute low concentrations of brimonidine?
63 1 efficacy of Lumify which is known in the 2 prior art related to the low concentrations 3 of brimonidine, not specifically -- I leave 4 it to Dr. Galanis and Laskar the specifics of 5 the terms and of the claims within this, but 6 related to the features that Mr. Jarosz has 7 put forth, that efficacy, safety, 8 tolerability and such, and I have analyzed 9 those features with my understandings from 10 Dr. Galanis and Dr. Laskar. 11 BY MR. O'QUINN: 12 Q. You mentioned low 13 concentrations of brimonidine. What are the 14 bounds of "low" in that testimony? 15 MS. CIPRIANO: Objection. 16 Scope. 17 THE WITNESS: I relied on 18 Dr. Galanis for information related to low 19 concentrations of brimonidine. 20 BY MR. O'QUINN: 21 Q. So sitting here today, you 22 don't have an opinion as to what	65 1 MS. CIPRIANO: Objection. 2 Outside the scope of the declaration. 3 THE WITNESS: I don't have an 4 opinion on a numeric range of low 5 concentrations of brimonidine. I rely on 6 information from Dr. Galanis and Dr. Laskar 7 related to information for low concentrations 8 of brimonidine. 9 BY MR. O'QUINN: 10 Q. Can you provide any definition 11 of what constitutes a low concentration of 12 brimonidine? 13 MS. CIPRIANO: Objection. Same 14 objection. 15 THE WITNESS: I rely on 16 Dr. Galanis for the understanding related to 17 low concentrations of brimonidine as 18 explained throughout my declaration. 19 BY MR. O'QUINN: 20 Q. So if the Patent Trial and 21 Appeal Board does not credit Dr. Galanis' 22 opinions relating to low concentrations of

66 1 brimonidine, you do not have any independent 2 opinions other than his, correct? 3 MS. CIPRIANO: Objection. 4 Incomplete hypothetical. 5 THE WITNESS: I don't have a 6 direct opinion on low concentrations of 7 brimonidine. What my analysis is doing is 8 Mr. Jarosz has discussed features of Lumify 9 such as the efficacy, safety, and 10 tolerability, and I have an understanding 11 from Dr. Galanis from a technical nature that 12 those features are known in the prior art; 13 therefore, there's not nexus to the 14 challenged claims of the '245 patent or the 15 '600 patent related to the features that 16 Mr. Jarosz has put forth, in addition to a 17 number of other opinions I have, such as the 18 sales and marketing that Bausch & Lomb has 19 put forth that drive the marketplace 20 performance of Lumify. 21 MR. O'QUINN: Can we take the 22 patent on the left side down, keep the one on	68 1 ocular hyperemia is reduced." 2 Do you see that? 3 A. I do. 4 Q. Is claim 1 of the '245 patent 5 identical in scope to claim 1 of the '742 6 patent on the right side of the screen? 7 MS. CIPRIANO: Objection. 8 Calls for a legal conclusion. Outside the 9 scope of the declaration. 10 THE WITNESS: I'm not one to 11 opine on the scope of the claims between the 12 two patents. That's more of a technical 13 question for someone else, I think, the 14 technical nature. The words that are listed 15 on the screen between claim 1 of the '245 16 patent and claim 1 of the '742 patent are not 17 identical. 18 BY MR. O'QUINN: 19 Q. '245 patent here on the left 20 side of the screen, claim 1 says, "consisting 21 of 0.025 percent weight by volume brimonidine 22 as the sole active ingredient."
67 1 the right up, and I would like to now put up 2 Exhibit 1001 '245 patent which was Exhibit 5 3 to this deposition. 4 THE VIDEOGRAPHER: 1001 '245 on 5 the left side? 6 MR. O'QUINN: Yes, please. And 7 if we could go to page 23 of that patent, 8 please, and zoom in on claim 1 if we could. 9 BY MR. O'QUINN: 10 Q. Are you able to read that, 11 Mr. Masztak? 12 A. I can, yes. 13 Q. So claim 1 of the '245 patent 14 recites "topically administering to an eye of 15 said human in need of said reduction of eye 16 redness a composition in the form of an 17 ocular drop consisting of 0.025 percent 18 weight by volume brimonidine as the sole 19 active ingredient, and one or more 20 non-therapeutic components including 21 benzalkonium chloride, wherein the ocular 22 drop has a pH between 5.5 to 6.5, wherein the	69 1 Do you see that? 2 A. I do. 3 Q. Now, claim 1 of the '742 patent 4 on the right side of the screen says, 5 "consisting essentially of administering 6 brimonidine to a patient having an ocular 7 condition, wherein brimonidine is present at 8 a concentration between about 0.001 percent 9 weight by volume and about 0.05 percent 10 weight by volume." 11 Do you see that? 12 A. I do see it. 13 Q. Did you consider in your 14 opinions the difference between the word -- 15 the phrases, rather, "consisting of" and 16 "consisting essentially of"? 17 A. I've not analyzed the claim 18 language related to the specifics between 19 this. I understand there's claim 20 construction that has occurred, and that is 21 more the nature of technical experts. I rely 22 on my understandings from Dr. Galanis and

70 1 Dr. Laskar, and my opinion relates to 2 analyzing the marketplace performance of 3 Lumify in the drivers of the Lumify, which I 4 understand are known in the prior art, as 5 well as the marketing that Bausch & Lomb has 6 put forth for Lumify. 7 Q. Your opinions in this case do 8 not address the difference between the claim 9 phrases "consisting of" and "consisting 10 essentially of" for the reasons you've just 11 stated, correct? 12 MS. CIPRIANO: Objection to the 13 extent it misstates the declarations. 14 THE WITNESS: My opinions are 15 related to the '245 patent and the '600 16 patent. I do not have an opinion to analyze 17 the '742 patent in these proceedings. 18 BY MR. O'QUINN: 19 Q. So we've compared the '245 20 patent claim 1 to '742 patent claim 1, and 21 we've compared '600 patent claim 1 to '742 22 patent claim 1.	72 1 Q. Just to be clear, your 2 understanding from Dr. Galanis is that 3 0.025 percent weight by volume brimonidine as 4 the sole active ingredient of an ocular drop 5 was found in the prior art? 6 MS. CIPRIANO: Objection to the 7 extent it misstates the record. 8 THE WITNESS: I rely on my 9 understandings from Dr. Galanis that the 10 efficacy of Lumify is known in the prior art. 11 BY MR. O'QUINN: 12 Q. The efficacy of Lumify as a 13 commercial product is known in the prior art? 14 That's your understanding? 15 A. Based on what Dr. Galanis has 16 put forth related to efficacy, safety, 17 tolerability, lack of rebound hyperemia, and 18 tachyphylaxis after repeated use, which are 19 features that Mr. Jarosz has addressed in his 20 declaration that I have rebutted in my 21 declarations. 22 Q. What Dr. Galanis has put forth
71 1 Would you agree with me that 2 claim 1 of the '245 patent and claim 1 of the 3 '600 patent are also not identical? 4 A. I agree the words in claim 1 of 5 the '245 patent and the words in claim 1 of 6 the '600 patent are not identical. 7 Q. Despite the differences in 8 those words, would you agree with me that 9 your opinions on nexus and commercial success 10 are identical for the '245 patent and the 11 '600 patent? 12 A. My analysis and understanding 13 is rebutting Mr. Jarosz' opinions regarding 14 the challenged claims of the '245 patent and 15 the challenged claims of the '600 patent. 16 And based on my analysis, the drivers of the 17 marketplace performance of Lumify are based 18 on features that were known in the prior art, 19 based on my understandings from Dr. Galanis 20 and Dr. Laskar, as well as the significant 21 marketing and promotion that Bausch & Lomb 22 has put forth for Lumify.	73 1 related to efficacy, safety, tolerability, 2 and lack of rebound hyperemia and 3 tachyphylaxis, those are based on the 4 Alphagan product, not the Lumify product, 5 correct? 6 MS. CIPRIANO: Objection to the 7 extent it misstates the record. 8 THE WITNESS: You would have to 9 ask Dr. Galanis the details of all of his 10 opinions related to that. I don't want to 11 leave out information there. I know there 12 are multiple prior art references that he has 13 used in his analysis that come to the 14 conclusion that the efficacy, safety, 15 tolerability, and the features that we are 16 discussing of Lumify were known in the prior 17 art; and, therefore, there's not nexus 18 related to the challenged claims of the '600 19 patent or the challenged claims of the '245 20 patent. 21 BY MR. O'QUINN: 22 Q. I just need to make sure I'm

74 1 clear on the understanding and the 2 assumptions that you put into your analysis 3 and your opinions. 4 Your understanding is that the 5 efficacy, safety, tolerability, and clinical 6 features of the 0.025 percent weight by 7 volume brimonidine Lumify commercial products 8 are not novel and were in the prior art; is 9 that correct? 10 MS. CIPRIANO: Objection to the 11 extent it misstates the declaration. 12 THE WITNESS: Those are 13 features that Mr. Jarosz has discussed in his 14 declaration that I have an understanding from 15 Dr. Galanis, as well as Dr. Laskar, related 16 to the information that was known in the 17 prior art that drives the marketplace 18 performance of Lumify and is unrelated to the 19 challenged claims of the '245 patent and the 20 challenged claims of the '600 patent. 21 MR. O'QUINN: All right. Let's 22 take the exhibits down that are on the	76 1 known in the prior art and the marketing of 2 that Bausch & Lomb has done for Lumify. 3 They're similar arguments that I've opined on 4 that drive the marketplace performance of 5 Lumify, but there are differences throughout 6 related to multiple citations. There's a 7 paragraph Mr. Jarosz has in the '600 that's 8 not in the '245. So they are not identical. 9 BY MR. O'QUINN: 10 Q. You cited to all the same 11 evidence in terms of exhibits in both 12 declarations, correct? 13 A. I cited to similar evidence. I 14 do not believe it is all identical evidence 15 but it's similar in nature, yes, but 16 "identical" I think would be too strong. 17 Q. The exhibits have the same 18 number across the two declarations, correct? 19 A. I believe they all do. I don't 20 want to misspeak if there is an exhibit 21 number that may be off, but I believe they 22 have similar exhibit numbers between the two
75 1 screen. 2 BY MR. O'QUINN: 3 Q. And if you could take, 4 Mr. Masztak, your copy in front of you, just 5 for ease, of the '245 patent declaration that 6 you submitted in this case. So that should 7 be Exhibit 1 to the deposition. We don't 8 need to put that back up on the screen. 9 And I think you testified to 10 this a few minutes ago, Mr. Masztak, but your 11 declaration for the '245 patent and your 12 declaration for the '600 patent are identical 13 in all substantive ways other than the actual 14 recitations of the patent number and the 15 actual recitations of the claim language; is 16 that fair? 17 MS. CIPRIANO: Objection to the 18 extent it misstates the declarations. 19 THE WITNESS: They are not 20 identical. They have similar opinions 21 related to the drivers of the marketplace 22 performance of Lumify related to what is	77 1 IPRs. 2 Q. So given this testimony, going 3 forward I'm not going to distinguish, for 4 ease of record, between your opinions for the 5 '245 versus your opinions for the '600, and 6 I'm going to be going off the '245 7 declaration, but if there are any differences 8 in your opinions and analysis that are unique 9 for the '600 patent, will you say so? 10 A. I will answer the questions 11 related to the '245 patent, which the 12 majority may be similar to the '600 patent, 13 but I'm not going to be able to definitively 14 match that up, but I understand the general 15 concepts of the opinions are similar. 16 Q. What is commercial success, 17 Mr. Masztak? 18 MS. CIPRIANO: Objection. 19 Calls for a legal conclusion. 20 THE WITNESS: Commercial 21 success, my understanding, based on the law, 22 is a construct that is analyzed and put forth

78 1 and asserted by a patent owner related to an 2 obviousness case, and that is the concept 3 that I'm rebutting in this case that 4 Mr. Jarosz has put forth. 5 BY MR. O'QUINN: 6 Q. Is there a threshold for what 7 makes a product commercially successful? 8 A. What do you mean by 9 "threshold"? 10 Q. Is there a dollar amount that 11 makes a product commercially successful 12 versus unsuccessful? 13 A. There is not a dollar amount 14 threshold. 15 Q. Can we turn to Section VI of 16 your declaration starting at paragraph 20. 17 Let me know when you're there. 18 A. I am there. 19 Q. Are these the definitions of 20 "commercial success" and "nexus" that you 21 applied in forming your opinions? 22 A. They are.	80 1 THE WITNESS: This is my 2 understanding through legal of understanding 3 what commercial success is. There's not a 4 specific case law that I'm putting forth, but 5 that commercial success is a secondary 6 consideration of nonobviousness that has been 7 asserted by patent owners in this case that I 8 am rebutting. 9 BY MR. O'QUINN: 10 Q. There's no case law cited in 11 paragraph 20 of your declaration, correct? 12 A. That is correct. 13 Q. Did you review any case law in 14 the course of forming your opinions? 15 A. Over time I have reviewed case 16 law throughout time, but recently as we did 17 this I don't know that I would have. I have 18 analyzed commercial success and nexus for at 19 least the past decade. 20 Q. Sitting here today, can you 21 recall any specific case that shaped your 22 understanding of commercial success as you
79 1 Q. And you say, as you testified a 2 moment ago, that it is my understanding that, 3 quote, commercial success is a legal 4 construct that has been established through 5 case law. 6 Do you see that? 7 A. I do. 8 Q. What case law are you referring 9 to? 10 A. This relates to the various 11 secondary considerations of nonobviousness 12 that have been put forth in part of the 13 Graham factors related to commercial success 14 as one of those components as asserted by the 15 (audio distortion) in Mr. Jarosz' 16 declarations. 17 (Court reporter clarification.) 18 BY MR. O'QUINN: 19 Q. Do you have any specific cases 20 in mind? 21 MS. CIPRIANO: Objection. 22 Calls for a legal conclusion.	81 1 applied it in this declaration? 2 A. I don't think I'd point to a 3 specific case that I would do that. It's my 4 experience in doing this for the past more 5 than decade at least, if not 15 years, of 6 analyzing commercial success and nexus in the 7 pharmaceutical industry. 8 Q. Looking at paragraph 21, you 9 state, "to support a finding of 10 nonobviousness, commercial success must be 11 driven by and attributable to the purported 12 merits of the patented invention." 13 Do you see that? 14 A. Yes. 15 Q. What is the basis for that 16 statement? 17 A. That is my understanding 18 through counsel of the concept of "nexus" as 19 I describe it throughout this and through my 20 experience over time of applying -- analyzing 21 marketplace success and nexus for 22 pharmaceutical products as well as other

82 1 products. 2 Q. Do you cite anything for that 3 proposition in paragraph 21 of your 4 declaration? 5 A. I do not here. 6 Q. Next you say, "In other words, 7 there must be a causal correlation, or 8 'nexus,' between the unique merit of the 9 claimed invention and the success of the 10 product." 11 Do you see that? 12 A. I do. 13 Q. Is it your opinion that 14 commercial success of a product must be 15 entirely attributable to the purported merits 16 of the patented invention in order for there 17 to be nexus? 18 MS. CIPRIANO: Objection. 19 Calls for a legal conclusion. 20 THE WITNESS: Commercial 21 success is analyzed as of the patent in the 22 term of an obviousness inquiry, not the	84 1 opinion related to what drives the 2 marketplace performance of a product. 3 BY MR. O'QUINN: 4 Q. Let's turn back to paragraph 17 5 of your report. And this is Section IV, 6 Summary of Opinions. 7 Do you see that? 8 A. I do. 9 Q. And you've provided in 10 paragraph 17 reasons A, B, and C, correct? 11 A. That is correct. 12 Q. Are those in ranked order or 13 they're just all the same importance? 14 A. I wouldn't say there's a 15 ranking order. It's what has accumulated 16 into my analysis that we have listed in the 17 summary of opinions. As its nature, summary 18 of opinions is summary in nature and does not 19 detail all the individual opinions that are 20 listed throughout the declaration that get to 21 the overall opinion that the marketplace 22 performance of Lumify is not driven by the
83 1 product. I refer to it more as the 2 marketplace success of a product to 3 distinguish the two. "Commercial success" 4 has a unique term of art as we've been 5 discussing here. It does not have to be the 6 sole reason for the driver of the marketplace 7 success of a product. 8 BY MR. O'QUINN: 9 Q. What percentage of marketplace 10 performance of a product has to be 11 attributable to the novel features of the 12 claimed invention for that marketplace 13 success to be objective indicia of 14 nonobviousness? 15 MS. CIPRIANO: Objection. 16 Calls for a legal conclusion. 17 THE WITNESS: There is not a 18 percentage or amount specific that needs to 19 be attributable to get there, which is why it 20 is an analysis, and it's built on multiple 21 facets of various things that are analyzed in 22 the market in order to come to an overall	85 1 challenged claims of the '245 patent. 2 Q. So you don't view any one of 3 these three factors as being critical to your 4 opinions, correct? 5 A. I think they're all critical to 6 the opinions, but it is an analysis of all of 7 the information to come to an overall opinion 8 of what drives the marketplace performance of 9 Lumify. 10 Q. So reason A in paragraph 17 is 11 that "The marketplace performance of Lumify 12 is driven by features that I understand were 13 known in the prior art." 14 Do you see that? 15 A. I do. 16 Q. Reason B is "The discussion of 17 marketing efforts in the Jarosz Declaration 18 is incomplete and misleading and the Jarosz 19 Declaration fails to appropriately 20 address" -- going on to the next page -- 21 "that the marketing and promotional efforts 22 by Bausch for Lumify also drive the

86 1 marketplace performance of Lumify." 2 Did I read that correctly? 3 A. You did. 4 Q. And, finally, reason C is that 5 "The Jarosz Declaration fails to apportion 6 the marketplace performance of Lumify among 7 the challenged claims of the '245 Patent and 8 to the other Orange Book listed patents for 9 Lumify." 10 Do you see that? 11 A. I do. 12 Q. And we talked about reason A, 13 the prior art, a little bit. I'd like to 14 talk about reasons B and C a bit. 15 You've advanced theories 16 similar to reasons B and C in other cases 17 where you have testified; would you agree? 18 A. I would have to definitively go 19 back and look at those reports, but I believe 20 that I have -- that these arguments could be, 21 but it's facts and circumstances of the cases 22 and specific to this Lumify is what my	88 1 right? 2 MS. CIPRIANO: Objection. 3 Calls for speculation. 4 THE WITNESS: I don't have an 5 opinion on his patent law understanding. He 6 is a Federal Circuit judge. I am aware of 7 that. And I testified in front of him, His 8 Honor. 9 BY MR. O'QUINN: 10 Q. And no slight to you, but is it 11 fair to say Judge Bryson has more experience 12 in patent law than you do? 13 MS. CIPRIANO: Objection. 14 Calls for speculation. 15 THE WITNESS: I am not a lawyer 16 by trade, and I think Judge Bryson would have 17 more legal understanding than I may. 18 MR. O'QUINN: I'd like to 19 introduce as Exhibit 11 the document in the 20 folder that has file name "Heron Therapeutics 21 (AMM Trial Testimony)," please. 22 MS. CIPRIANO: For the record,
87 1 opinions are advanced in this case. 2 Q. One of the cases you testified 3 in that we discussed from your CV earlier was 4 the Heron Therapeutics case, correct? 5 A. Correct. 6 Q. And that was a District Court 7 case that went to trial last year, right? 8 A. That's correct. I believe in 9 June of last year. 10 Q. And you provided live testimony 11 at trial in that case, correct? 12 A. That is correct. 13 Q. And that was a bench trial 14 before Judge William Bryson, correct? 15 A. That is correct. 16 Q. And are you aware that Judge 17 Bryson sits, for his day job, on the Court of 18 Appeals for the Federal Circuit, a higher 19 level appellate court? 20 A. I am aware, yes. 21 Q. Fair to say Judge Bryson has 22 pretty extensive experience in patent law,	89 1 I will lodge objections to the introduction 2 of the exhibit based on 401, 402, 403, 3 hearsay and scope. 4 MR. O'QUINN: Can we bring that 5 exhibit up on the screen, please. 6 THE VIDEOGRAPHER: Which 7 exhibit, please? 8 MR. O'QUINN: The exhibit that 9 has the file name "Heron Therapeutics," 10 H-E-R-O-N, and in the parentheses it says 11 "AMM Trial Testimony." 12 (Exhibit 11 marked for 13 identification.) 14 BY MR. O'QUINN: 15 Q. So I'll represent this is an 16 excerpt of the publicly available transcript 17 of Day 3 of the trial. 18 MR. O'QUINN: If we could put 19 that back up, please. 20 THE VIDEOGRAPHER: Yep. One 21 moment. I'm trying to move it (inaudible). 22 BY MR. O'QUINN:

90 1 Q. So this was Day 3 of the bench 2 trial, Wednesday, June 26, 2024. 3 Do you see that, Mr. Masztak? 4 A. I do. 5 Q. If we can go to PDF page 5 of 6 this document, this is where your direct 7 testimony begins, correct? 8 A. That appears to be the case. I 9 don't have access to this right now; but 10 based on what's on the screen, that looks 11 correct. There it is. 12 Q. Yeah, you can refresh the 13 folder and pull it down if you want to look 14 at the whole document. 15 You were under oath during this 16 testimony, correct? 17 A. I was. 18 Q. And your testimony was true and 19 accurate in that case, correct? 20 A. It was. 21 Q. I'd like to go to PDF page 30 22 in this document which is, going by the	92 1 to that and what is available. I know this 2 is only a redacted portion. 3 BY MR. O'QUINN: 4 Q. You opined in the Heron 5 Therapeutics case that Heron's marketing 6 efforts drove the sales of Cinvanti, correct? 7 MS. CIPRIANO: Objection. 8 Relevance. 9 THE WITNESS: Yes, that is what 10 my answer states on the page, yes. 11 BY MR. O'QUINN: 12 Q. You're opining in these 13 proceedings that Bausch & Lomb's marketing 14 efforts drove the sales of Lumify, correct? 15 A. That is one of my opinions in 16 this case, yes. 17 Q. Let's go to PDF page 51 of this 18 document. And looking down around line 20, 19 you're asked by counsel: "I'd like to 20 address your opinion regarding the other 21 patents that are listed in the Orange Book 22 that allegedly cover Cinvanti. Do you have
91 1 transcript pagination, page 836. If we 2 could -- yeah. I'd like to look starting at 3 line 14 on the previous page. 4 You were asked by counsel: 5 "You opined that Heron's marketing efforts 6 drove the sales of Cinvanti. And generally, 7 how has Heron's marketing impacted those 8 sales?" 9 Do you see that? 10 A. I do see that. 11 Q. And your opinion was that 12 Heron's marketing efforts were the primary 13 driver of the sales of Cinvanti; is that 14 correct? 15 MS. CIPRIANO: Objection. 16 Relevance. 17 THE WITNESS: I would need to 18 go back and look at the full testimony, and I 19 don't know what is all available in the 20 record, but I don't know that it is the 21 primary driver. I would have to look at the 22 opinions and see the full testimony related	93 1 an opinion regarding these other patents that 2 are not in suit in this matter?" 3 Do you see that? 4 A. I do see that. 5 Q. And what you go on to say on 6 the next page at line 25 spreading onto PDF 7 page 53 -- so if we could scroll down to the 8 bottom of page 52. Keep going. Other way. 9 Other way. You are asked -- sorry. If we 10 could go back up. Just pause right there. 11 You were asked at line 23 of 12 page 858 of the transcript: "And how does 13 this impact your opinions regarding nexus?" 14 And your answer, if we scroll 15 down a little bit, not too much, you say: 16 "So what this is, is an incomplete analysis 17 of nexus by failing to attribute value to the 18 other eight patents or the aprepitant 19 compound." 20 Do you see that? 21 A. I do see that. 22 Q. You are offering similar

94 1 opinions in this case regarding failure to 2 apportion by Mr. Jarosz across the Orange 3 Book patents of Lumify, correct? 4 MS. CIPRIANO: Objection. 5 Relevance. 6 THE WITNESS: I have an opinion 7 related to the Lumify matter which is very 8 different that is -- than the matter that we 9 are looking at on screen, aprepitant, which 10 dealt with a chemotherapy-induced nausea and 11 vomiting product compared to an 12 over-the-counter eye drop that we're dealing 13 with here, but I do have an opinion related 14 to Mr. Jarosz' failure to analyze the other 15 Orange Book listed patents for Lumify. 16 BY MR. O'QUINN: 17 Q. In both the Heron Therapeutics 18 case and this case, you have offered an 19 opinion that there was no nexus between the 20 marketplace success of the product you are 21 analyzing and the patents because there was a 22 failure to apportion across other Orange Book	96 1 nexus was because of a failure to apportion 2 across Orange Book patents, right? 3 MS. CIPRIANO: Objection. 4 Relevance. 5 THE WITNESS: In both cases I 6 have offered an opinion related to other 7 Orange Book patents, as well as numerous 8 other opinions, because a single opinion does 9 not get you to the overall opinion. It's an 10 aggregation of evidence and analysis -- and 11 both cases are very different cases -- that 12 get to an opinion, and there are lots of 13 things I know I addressed in the Heron matter 14 that are not being addressed in the Lumify 15 matter, and there are things I addressed in 16 the Lumify matter that were not addressed in 17 the Heron matter. 18 BY MR. O'QUINN: 19 Q. Did you analyze as part of your 20 opinions in this case whether the '245, '600, 21 and '742 patent claims challenged in those 22 proceedings were coextensive?
95 1 patents; is that right? 2 MS. CIPRIANO: Objection to the 3 extent it misstates the declaration. 4 THE WITNESS: There are 5 multiple opinions and analysis that went into 6 what I have for the '245 patent that we're 7 talking here for Lumify. I'm getting to the 8 conclusion that there's not nexus to the 9 challenged claims of the '245 patent. 10 Similarly, in the Heron 11 Therapeutics matter, there are multiple 12 opinions that I'm not sure all are available 13 or not in the redacted version -- I've not 14 looked at that in some time, and everything 15 else would be under a protective order -- of 16 getting to the opinion related to no nexus to 17 the patent at issue in that matter. 18 BY MR. O'QUINN: 19 Q. I didn't necessarily ask if 20 that was your only opinion. I'm stating in 21 both of those cases you have offered an 22 opinion that one of the reasons there was no	97 1 A. I do not offer opinion 2 regarding the coextensive or noncoextensive 3 nature of the '742 patent, the '600 patent, 4 or the '245 patent, and I know I've testified 5 earlier today I do not have an opinion on the 6 '742 patent in this matter. My opinions 7 relate to the challenged claims of the '600 8 patent and the challenged claims of the '245 9 patent. 10 Q. Have you done an assessment 11 quantitatively of what value is attributable 12 to the '245 patent versus the '600 patent? 13 MS. CIPRIANO: Objection. 14 Scope. 15 THE WITNESS: My analysis 16 relates to a critique of Mr. Jarosz, who is 17 the one that's asserting commercial success 18 in this matter, and I am identifying 19 extrinsic factors to the challenged claims of 20 the '245 patent in that declaration that he 21 has failed to consider related to other 22 potential drivers of the performance of

98 1 Lumify. 2 BY MR. O'QUINN: 3 Q. You have not done an 4 independent analysis of what proportion of 5 the marketplace performance of Lumify is 6 attributable to the challenged claims of the 7 '245 patent versus the challenged claims of 8 the '600 patent, fair? 9 A. I am not asserting the 10 commercial success in this matter. I am 11 analyzing what Mr. Jarosz has put forth, and 12 he has put forth that there are challenge -- 13 that there's nexus, in his opinion, to the 14 challenged claims, and I'm identifying 15 extrinsic factors to the challenged claims of 16 the '245 patent and may be drivers and are 17 drivers of the marketplace performance of 18 Lumify, and that is what I am putting out as 19 an incomplete analysis, I believe is how we 20 referred to it in the Summary of Opinions, 21 that Mr. Jarosz has failed to consider. 22 Q. I just need to make sure I've	100 1 marketplace performance of Lumify across the 2 Orange Book patents, correct? 3 A. It's a little more than that. 4 Among the challenged claims of the '245 5 patent and to the other Orange Book listed 6 patents for Lumify because in his declaration 7 Mr. Jarosz is not specific of what claims, 8 what challenged claims, he is addressing. 9 Q. You have not yourself 10 undertaken any such apportionment, correct? 11 MS. CIPRIANO: Objection. 12 Asked and answered. 13 THE WITNESS: I am not 14 asserting commercial success in this matter. 15 Our opinions relate to -- I've been asked to 16 rebut and analyze Mr. Jarosz' declaration, 17 and I've performed a complete analysis to 18 arrive at my opinions that there is not nexus 19 to the challenged claims of the '245 patent. 20 MR. O'QUINN: I'd like to bring 21 in as a new exhibit the document with the 22 file name "Heron DI193 Fof." And if we could
99 1 got an answer to the question I'm asking. 2 You are asserting that 3 Mr. Jarosz' analysis is incomplete. You have 4 not presented what you would consider a 5 complete analysis, right? 6 A. I have presented a complete 7 analysis as a rebuttal to Mr. Jarosz' 8 opinions related to his opinion that the 9 marketplace success and there is nexus to the 10 challenged claims is what Mr. Jarosz is 11 saying. I've identified and analyzed various 12 components that we've walked through related 13 to what is known in the prior art, the 14 significant marketing of Lumify, as well as 15 other patents that Mr. Jarosz has failed to 16 consider, to arrive at a complete analysis 17 for my opinions that there is not nexus to 18 the challenged claims of the '245 patent. 19 Q. You have asserted, as reads in 20 C in paragraph 17 of your declaration, that 21 one of the reasons Mr. Jarosz' opinions are 22 faulty is that he failed to apportion the	101 1 put that up on the screen, please. 2 MS. CIPRIANO: For the record, 3 I'll assert objections to the document under 4 401, 402, 403, hearsay, relevance, and scope. 5 (Exhibit 12 marked for 6 identification.) 7 BY MR. O'QUINN: 8 Q. These document -- this document 9 are the Findings of Fact and Conclusions of 10 Law from Heron Therapeutics versus Fresenius 11 Kabi USA, LLC, and this was filed by Judge 12 Bryson on December 3, 2024 as Document Number 13 193 in the U.S. District Court for the 14 District of Delaware, Case Number 15 1:22-cv-985-WCB. 16 This is the same Heron 17 Therapeutics case that we just looked at the 18 transcript of your testimony for, correct? 19 A. That appears to be the case, 20 yes. 21 Q. Have you seen this document 22 before?

102 1 A. I have. 2 Q. Can we go to page 51 of this 3 document. 4 This is where Judge Bryson is 5 presenting his findings of fact and 6 conclusions of law regarding commercial 7 success, which, as we just saw, was the 8 subject of your testimony in the Heron case, 9 correct? 10 A. That is correct, yes. 11 Q. Judge Bryson did not agree with 12 you that there was no nexus, correct? 13 MS. CIPRIANO: Objection. 14 Relevance. 15 THE WITNESS: If I could have a 16 moment to re-read the section. 17 MR. O'QUINN: Sure. 18 THE WITNESS: Okay. Can you 19 repeat the question, please. 20 BY MR. O'QUINN: 21 Q. Judge Bryson did not agree with 22 your opinion that there was no nexus between	104 1 THE WITNESS: I believe it is 2 the judge's opinion, or if it would be a 3 jury's opinion, but the trier of fact's 4 opinion to waive secondary considerations in 5 a manner and it is not always a 6 black-and-white, yes-or-no type of analysis, 7 but that's -- from a legal perspective, that 8 would be a better question for someone else. 9 BY MR. O'QUINN: 10 Q. Looking at the paragraph that's 11 on the screen, about halfway down there's a 12 sentence that says, "Weighing the competing 13 evidence, I conclude that the commercial 14 success of Cinvanti has been at least partly 15 attributable to its properties compared to 16 the competing products, but that the pricing 17 strategies followed by Heron have had a 18 significant role to play in giving Cinvanti 19 as large a market share as it has." 20 Do you see that? 21 A. I do. 22 Q. And as you stated, Judge Bryson
103 1 the patented features in the Heron case and 2 the marketplace performance of Cinvanti, 3 correct? 4 MS. CIPRIANO: Objection. 5 Relevance. 6 THE WITNESS: In this case, as 7 shown on the screen and on the next page, 8 Judge Bryson lists his opinion that he did 9 agree with part of my opinion and he did 10 agree with part of plaintiff's opinion in 11 this case, specifically related to the 12 pricing and strategies that Heron put forth 13 in this case which was my opinions regarding 14 no nexus on that. And, on balance, it is -- 15 you could read the last sentence -- it is in 16 favor of Heron but only slightly. 17 BY MR. O'QUINN: 18 Q. The factor would not be 19 considered at all if there was no nexus, 20 correct? 21 MS. CIPRIANO: Objection. 22 Calls for a legal conclusion. Relevance.	105 1 concluded that the commercial success factor 2 favors Heron but only slightly, correct? 3 MS. CIPRIANO: Objection. 4 Relevance. 5 THE WITNESS: That's what it 6 states on the screen. 7 BY MR. O'QUINN: 8 Q. So the simple fact that there 9 were other marketing and pricing factors 10 involved in this case did not preclude Judge 11 Bryson from finding that Cinvanti was a 12 commercial success and that it should be 13 factored into the obviousness calculus, 14 correct? 15 MS. CIPRIANO: Objection. 16 Calls for a legal conclusion. 17 THE WITNESS: I would think 18 that's an overall opinion. I don't know how 19 much weight Judge Bryson did or did not put 20 on commercial success. I know this is also 21 currently still under appeal and in the 22 process, but I know that every factor can

106 1 have its own weight, and I don't know what 2 Judge Bryson's thoughts were as he factored 3 in everything. 4 BY MR. O'QUINN: 5 Q. If Judge Bryson had credited 6 your opinions regarding marketing and failure 7 to apportion, he would not have considered 8 commercial success in his analysis at all 9 because there would be no nexus, correct? 10 MS. CIPRIANO: Objection. 11 Speculation. Calls for a legal conclusion. 12 Incomplete hypothetical. 13 THE WITNESS: I think -- I 14 can't -- as I said, I don't know what Judge 15 Bryson's mindset was or how he thought about 16 his opinions and weighed the various factors. 17 But as I stated earlier, there are multiple 18 opinions throughout my testimony in the Heron 19 matter just like there are in the Lumify 20 matter, and these cases are very different 21 cases that are not analogous in their 22 features. I did have an opinion, as we said,	108 1 what he did or didn't opine on. The only 2 thing we have is the opinion that is in front 3 of us here. I think you'd have to ask Judge 4 Bryson to get more fulsome thought and 5 analysis on how he came to his conclusions. 6 BY MR. O'QUINN: 7 Q. Did you cite these findings of 8 fact in your declaration in the Lumify case? 9 A. No, I did not. 10 Q. There is no legal requirement 11 for the apportionment theory that you argued 12 in Heron and that you argued here, correct? 13 MS. CIPRIANO: Objection. 14 Calls for a legal conclusion. 15 THE WITNESS: Can you explain 16 what you mean by "legal requirement"? 17 BY MR. O'QUINN: 18 Q. You have argued that there is 19 no nexus because Mr. Jarosz failed to 20 apportion among the Orange Book patents for 21 Lumify, correct? 22 A. That is one of my many opinions
107 1 for marketing and apportionment, but I had a 2 very significant pricing strategy argument as 3 stated that Judge Bryson did include here 4 which is different, and that goes to the 5 point that it's not one feature or opinion 6 that gets to a conclusion; it's an 7 aggregation of evidence that gets to the 8 overall opinion. 9 BY MR. O'QUINN: 10 Q. So that's a fair point. Your 11 pricing argument in the Heron case was what 12 perhaps tipped the balance to slight 13 consideration. The marketing and 14 apportionment arguments are not mentioned 15 here, correct? 16 MS. CIPRIANO: Objection. 17 Calls for speculation and legal conclusion. 18 Relevance. 19 THE WITNESS: I don't know what 20 Judge Bryson took in or didn't. I know what 21 I testified to at trial. I had very good 22 interaction with Judge Bryson. I don't know	109 1 that are included in the declarations, yes. 2 Q. There is no legal requirement 3 for Mr. Jarosz to have done so in order for 4 there to be nexus, agreed? 5 MS. CIPRIANO: Objection. 6 Calls for a legal conclusion. 7 THE WITNESS: I am not aware of 8 legal requirements. That's probably a better 9 question for somebody else. My analysis is 10 to look at extrinsic factors and understand 11 the drivers of the marketplace performance of 12 Lumify, and Mr. Jarosz has asserted 13 commercial success, and I have rebutted his 14 assertion of that by the analysis put forth 15 in my declaration. 16 BY MR. O'QUINN: 17 Q. If there was a legal 18 requirement for apportioning across Orange 19 Book patents in order for there to be a nexus 20 or secondary considerations, Judge Bryson 21 would not have found commercial success in 22 favor of Heron in the Heron case, correct?

110 1 MS. CIPRIANO: Objection. 2 Calls for speculation. Calls for a legal 3 conclusion. 4 THE WITNESS: Again, I can't 5 opine on what Judge Bryson considered in his 6 analysis, and the facts of the case are very 7 different between the two. There's different 8 patents at issue. There were different 9 patents at issue and also covering products 10 that these are not analogous cases to compare 11 an argument in one versus the other. There's 12 facts and circumstances that come into play. 13 BY MR. O'QUINN: 14 Q. Have you read petitioners' 15 reply brief in this case? 16 A. I have, yes. 17 Q. And are you aware that there is 18 a citation to an IPR decision in a case 19 called Nevro relating to the apportionment? 20 A. If you could point me to that, 21 I would have to look at that. I'm not sure 22 if I've pulled the case law related to that.	112 1 your citation to it in your brief? 2 MS. CIPRIANO: No. We can rely 3 on it for its legal principles. I can object 4 to it to the extent that Mr. Masztak doesn't 5 have, you know, the foundation for him to 6 testify about it. 7 MR. O'QUINN: Why don't we pull 8 up -- actually, why don't we take a break, 9 and then we'll discuss this when we get back. 10 THE VIDEOGRAPHER: Off the 11 record at 11:09. 12 (Brief recess.) 13 THE VIDEOGRAPHER: On the 14 record at 11:24. 15 BY MR. O'QUINN: 16 Q. Welcome back, Mr. Masztak. 17 A. Thank you. 18 Q. Did you discuss the substance 19 of any of your testimony with your counsel 20 during the break? 21 A. I did not, no. 22 Q. So before the break, we were
111 1 MR. O'QUINN: Well, let's go 2 ahead and do that here. If we could bring in 3 the Exhibit that has the file name 4 "IPR2019-1313," please. 5 (Exhibit 13 marked for 6 identification.) 7 BY MR. O'QUINN: 8 Q. So this is Paper 74 entered 9 January 19, 2021 in the PTAB proceeding 10 IPR2019-1313 between Nevro Corp. as the 11 petitioner and Boston Scientific 12 Neuromodulation Corp. as the patent owner. 13 MS. CIPRIANO: For the record, 14 I'll lodge objections to this exhibit under 15 401, 402, 403, hearsay and relevance. 16 MR. O'QUINN: It's relied on as 17 your argument. I can't see how that's a 18 viable objection, but we'll -- 19 MS. CIPRIANO: I can make an 20 objection to the extent it's submitted as an 21 exhibit in this deposition. 22 MR. O'QUINN: Are you waiving	113 1 talking about petitioners' reply brief and so 2 I'd like to bring that up so we have the 3 proper context. The exhibit I'd like to 4 introduce is -- has the file name "2025-02-25 5 Paper 58." It was just put in the folder. 6 THE VIDEOGRAPHER: Stand by, 7 please. I have to download it. 8 MR. O'QUINN: Okay. 9 THE VIDEOGRAPHER: It's moved 10 to the shared folder if you'd like to bring 11 it up there while I download it. 12 (Exhibit 14 marked for 13 identification.) 14 BY MR. O'QUINN: 15 Q. So this exhibit is Paper 58 in 16 the 467 IPR proceeding pertaining to the '245 17 patent, and it is Petitioners' Reply Brief 18 dated February 25, 2025. And before the 19 break, Mr. Masztak, you said you had reviewed 20 this brief in preparing for your deposition? 21 MS. CIPRIANO: Objection to the 22 extent it misstates the testimony.

114 1 THE WITNESS: Yeah, I believe 2 we did after -- that would have been after 3 issuance of the Hofmann declaration at the 4 time. 5 BY MR. O'QUINN: 6 Q. If we could go to PDF page 48 7 of this exhibit, please. There's subheading 8 there "B" called "Lack of Nexus." 9 Do you see that? 10 A. I do. 11 Q. And there's two paragraphs here 12 for this argument across this page and the 13 next one; would you agree? 14 A. It appears to be, yes. 15 Q. And if we go back up to the 16 beginning of the section, the brief says, 17 "Presenting essentially the same arguments 18 from the '742 IPR, PO again fails to 19 establish a nexus between the claims and PO's 20 alleged secondary considerations." 21 Do you see that? 22 A. I do.	116 1 alleged success to the '245 patent (as 2 opposed to the '742 patent)," and the 3 citation there is to Mr. Hofmann's 4 declaration, paragraphs 67 to 73. 5 Do you see that? 6 A. I do see that. 7 Q. And so you have the same 8 paragraphs, 67 to 73, in your declaration for 9 the '245 patent, correct? 10 A. I do, yes. 11 Q. And then the citation after the 12 declaration cite is to Nevro Corp. v. Boston 13 Sci., Scientific, Neuromodulation Corp., IPR 14 2019-1313, Paper 74. 15 Do you see that? 16 A. I do see that. 17 Q. And that was the document that 18 we had pulled up just before the break. Do 19 you recall? 20 A. I believe that is correct. 21 Q. Did you review the Nevro Corp. 22 IPR Paper 74 in the course of forming your
115 1 Q. That's consistent with your 2 opinions that you've presented in your 3 declaration, correct? 4 A. My declaration is focused on 5 commercial success and nexus in rebuttal to 6 Mr. Jarosz' opinions, whereas I believe this 7 brief would be inclusive of a lot more than 8 just what I have rebutted Mr. Jarosz in my 9 declarations. 10 Q. That being said, there's two 11 paragraphs in this brief and several dozen 12 paragraphs in your declaration, fair? 13 MS. CIPRIANO: Objection to the 14 extent it misstates the record. 15 THE WITNESS: Factually, there 16 are two paragraphs that appears in this 17 section labeled "B. Lack of Nexus," and there 18 are multiple paragraphs in my declaration. 19 BY MR. O'QUINN: 20 Q. The last sentence in the first 21 paragraph that's on the screen right now 22 says, "PO fails to apportion any of Lumify's	117 1 opinions? 2 MS. CIPRIANO: Objection. 3 Scope. 4 THE WITNESS: I did not cite 5 that document in forming my opinions. The 6 opinions that I've come to are based on the 7 exhibits that I had referenced in my 8 Appendix 1 to which this case is not listed 9 in Appendix 1 to my declaration. 10 BY MR. O'QUINN: 11 Q. Before the break, you provided 12 the testimony -- and I'm going to read it -- 13 the facts of the case are very different 14 between the two. There's different patents 15 at issue. There were different patents at 16 issue and also covering products that these 17 are not analogous cases to compare an 18 argument in one versus the other. Do you 19 recall that testimony? 20 A. I don't know word for word, but 21 that sounds like what we had discussed before 22 the break.

118 1 Q. That would apply with equal 2 force to a comparison between the Nevro case 3 and the current proceeding that we're in, 4 correct? 5 MS. CIPRIANO: Objection. 6 Calls for a legal conclusion. Scope. 7 THE WITNESS: I -- as I said, 8 the Nevro case is not listed in my appendix, 9 and I have not come to the -- I have not 10 looked at that in coming to my opinions in 11 this matter. 12 BY MR. O'QUINN: 13 Q. And the Nevro case was not 14 about pharmaceuticals; it's about medical 15 devices, correct? 16 MS. CIPRIANO: Objection. 17 Foundation. Scope. 18 THE WITNESS: As I had 19 mentioned, I have not reviewed the Nevro case 20 in forming my opinions in this matter, so I'm 21 not sure the product, products, that are at 22 issue in that matter.	120 1 using. I don't know what numbers you're 2 trying to compare. 3 Q. You are opining -- excuse me. 4 You're opining in this case that a major 5 driver, if not the major driver, of Lumify's 6 marketplace success is Bausch & Lomb's 7 aggressive marketing and promotion. Would 8 you agree with that? 9 A. I have the opinion that 10 marketing is a significant driver, the 11 marketplace performance of Lumify based on 12 various marketing strategies that Bausch & 13 Lomb has taken. 14 Q. So of the revenue that Bausch & 15 Lomb has booked for the Lumify product in the 16 United States since it launched, what 17 percentage of that revenue is attributable to 18 Bausch & Lomb's marketing and promotion 19 strategies? 20 A. So first can you define 21 "revenue" as you're using it? 22 Q. Let's call it net sales for
119 1 BY MR. O'QUINN: 2 Q. You're not opining that the 3 Nevro case forms the basis of any sort of 4 legal requirement for apportionment, correct? 5 MS. CIPRIANO: Objection. 6 Scope. Foundation. Calls for a legal 7 conclusion. 8 THE WITNESS: As I've 9 mentioned, I do not cite the Nevro case in my 10 appendix; and in coming to my conclusions, I 11 have not cited that case in my footnotes 12 either for the declarations for the '245 13 patent or the '600 patent. 14 MR. O'QUINN: You can take that 15 exhibit down. 16 BY MR. O'QUINN: 17 Q. Do you know what percentage of 18 sales of Lumify are the result of marketing 19 and promotional efforts? 20 A. Can you define that a little 21 more? I don't know off the top of my head, 22 but there are multiple terms that you're	121 1 ease of reference. 2 A. Okay. And are you referring to 3 net sales as gross sales less all discounts, 4 rebates, chargebacks, returns, to arrive at 5 net sales? 6 Q. Yes. 7 A. Okay. 8 Q. So I'll ask the question 9 cleanly one more time. 10 Of the net sales, being defined 11 as gross sales minus discounts, rebates, 12 chargebacks, and returns, that Bausch & Lomb 13 has booked for Lumify in the United States 14 since that product launched, what percentage 15 of those net sales are attributable to Bausch 16 & Lomb's marketing and promotion strategy? 17 A. I don't -- I don't know if 18 you're referring to a calculation or not from 19 a -- when you're referring to a percentage. 20 If we want to dig into that more, we can. 21 But based on my analysis, Bausch & Lomb has 22 put forth significant marketing efforts that

122 1 I've determined drive the sales of Lumify and 2 continue to drive the sales of Lumify as they 3 change their marketing techniques throughout 4 time. 5 Q. But you have not assigned 6 quantitative percentages to any factor 7 driving the marketplace performance of 8 Lumify, fair? 9 A. In the analysis of looking at 10 the drivers of the marketplace performance of 11 Lumify, it is not one single driver as we've 12 talked about earlier, but marketing is a 13 significant driver of the performance of 14 Lumify, and it's evident in what Bausch & 15 Lomb has done to promote this as a beauty 16 product and put forth the efforts and more 17 recently the significant volumes of the 18 samples that they are putting out to 19 consumers, which is not a significant cost 20 when you're looking financially but it is 21 driving the performance of this product. 22 Q. We talked a fair amount about	124 1 MS. CIPRIANO: Objection. 2 Scope. 3 THE WITNESS: Can you explain 4 that maybe a little differently so I 5 understand what you're asking? 6 BY MR. O'QUINN: 7 Q. Sitting here today, can you 8 think of any pharmaceutical product, be it 9 prescription or over-the-counter, that has 10 attained marketplace success without any 11 marketing or promotion by the pharmaceutical 12 company that owns that NDA? 13 A. That's, one, not the analysis 14 that I've taken in this case. The analysis 15 here is to look at Lumify and understand what 16 is driving Lumify in multiple pharmaceutical 17 companies, which I even say in the 18 declaration put forth efforts to market and 19 promote products, and it's an understanding 20 of how they're doing that that drives the 21 marketplace performance of the product; and 22 in analyzing Lumify, those efforts are not
123 1 apportionment as a concept today. You have 2 not apportioned the marketplace performance 3 and net sales of Lumify among the various 4 drivers that you have identified, correct? 5 A. I have not quantitatively 6 apportioned a specific value related to that; 7 and I think, as we talked about before, 8 Mr. Jarosz is the one that's asserting the 9 commercial success here. He's trying to 10 demonstrate that the marketplace performance 11 is based on challenged claims. 12 I've taken a look at the 13 analysis and identified the prior art is a 14 significant driver, the marketplace 15 performance of Lumify, as well as the 16 marketing that Bausch & Lomb has put forth, 17 which is what we're discussing now, drives 18 the marketplace performance of Lumify. 19 Q. You identify a branded 20 pharmaceutical product that has attained 21 success in the marketplace without any 22 marketing or promotion by its brand?	125 1 related to the challenged claims of the '245 2 patent or the challenged claims of the '600 3 patent, and instead they are using 4 significant and aggressive marketing, I think 5 is what you had referred to before, to 6 promote the product and drive the sales of 7 Lumify. 8 Q. Virtually every pharmaceutical 9 product that is offered in the United States 10 has some level of marketing, promotion, and 11 advertising behind it; would you agree? 12 MS. CIPRIANO: Objection. 13 Scope. 14 THE WITNESS: I mean, I don't 15 think I can agree with every product has that 16 type of marketing and promotion. There are 17 brand products that do typically have that 18 promotion. Generic products are typically 19 not promoted by the generics that are selling 20 for AB-rated substitutable products. 21 If you get into a hospital 22 setting, such as what Civanti was in the case

126 1 we talked about before, it's not a -- it's 2 not a lot of marketing because it is more 3 focused on a hospital and dealing with 4 pricing and dealing with the different 5 formularies. 6 So there's a lot of factors 7 that go in. I don't think -- I'm not 8 comfortable saying that every product is 9 promoted that's out there. 10 BY MR. O'QUINN: 11 Q. Let's focus just -- and that's 12 a fair point that you've made, but let's 13 focus on brand products. 14 Virtually every branded 15 pharmaceutical product offered for sale in 16 the United States has some level of 17 marketing, promotion, and advertising behind 18 it, correct? 19 MS. CIPRIANO: Objection. 20 Asked and answered. 21 THE WITNESS: I think there's 22 still even more caveats when you deal with	128 1 A. Depending on the facts and 2 circumstances of a case, I mean, there's lots 3 of information to consider of what a driver 4 of a product could be. As looking at Lumify, 5 we're talking about the marketing and 6 promotion in the various marketing kind of 7 pop-up sales they do, all the samples they 8 put out there, the social media presence they 9 put. That's what's driving this product. 10 And more recently it's been the significant 11 level of sampling that they have done, and 12 they also have a lot of detailing that they 13 have done throughout time. 14 Q. The clinical features of a drug 15 can be a factor in sales of a drug; would you 16 agree? 17 A. As a general term, there's -- 18 that is possible, but the facts and 19 circumstances of the case I think are 20 important to consider. When we're thinking 21 of the clinical features that Mr. Jarosz has 22 put out in the Lumify case here, I understand
127 1 that. Like, I don't think you can say all of 2 them. Marketing is a significant driver of 3 certain brand products, and a lot of brand 4 products it is. But once a generic enters of 5 a brand product, pharma companies typically 6 stop promoting the product. 7 So even though a brand product 8 exists, there's a lot of times you're not 9 promoting that product still, so I don't 10 think it's -- I think you got to look at the 11 facts and circumstances of each case to kind 12 of understand what we're dealing with. 13 BY MR. O'QUINN: 14 Q. You are not opining that there 15 can never be a nexus in an analysis of 16 commercial success when there is marketing 17 and promotion present, correct? 18 A. That is not my opinion in this 19 case at all, no. 20 Q. The formulation of a drug could 21 also be a factor in sales of the drug, would 22 you agree?	129 1 those features are known in the prior art 2 which would not create a nexus to the 3 challenged claims of the '600 or the 4 challenged claims of the '245 patent. 5 Q. Did you review any data in 6 forming your opinions in this case regarding 7 how many physicians recommended Lumify to 8 their patients? 9 A. I know that we -- there were 10 two surveys that were produced in this 11 matter, one that was done in 2020 and one 12 that was in 2024, that references certain 13 questions. I don't know if it was that 14 specific type of question, but it gets 15 optometrists' and ophthalmologists' opinions 16 regarding drivers and information of Lumify 17 compared to competitors, but I don't -- we'd 18 have to -- if you have that direct question, 19 if that's what you're pulling it from, I 20 think it would be better to look at it to see 21 exactly what the wording is. 22 Q. Did you go back and review

130 1 those two surveys separately of each other 2 outside of the confines of how Mr. Jarosz and 3 Mr. Ferris presented them? 4 A. I've reviewed both of the 5 surveys from 2020 and 2024 in coming to my 6 opinions for this case. 7 Q. Are you disputing the data 8 presented in those two surveys? 9 A. I have not disputed the data. 10 I don't have the underlying data that Bausch 11 would have for that, but it's -- or even the 12 third party that Bausch retained to do the 13 surveys. I don't have any reason to dispute 14 the information that was included in there, 15 but I don't have the data to analyze. 16 Q. Can we look at your CV again. 17 That's the Exhibit 1202 file that we looked 18 at this morning. If we could put that back 19 up on the screen. Can you go to PDF page 6 20 of this document. 21 About two-thirds of the way 22 down the page there's a case called Mylan	132 1 Mr. Hofmann's preparation in any of the 2 depositions he may have had in those 3 proceedings? 4 A. I would say I probably was. 5 This is 2017. These are all the engagements 6 I led. There are certain times that a depo 7 prep session is scheduled and someone is not 8 around so the rest of the team does it; but 9 if my memory serves me right, I believe I 10 assisted in his -- in the depo prep meetings. 11 I definitely helped him in the preparation 12 for the case. 13 MR. O'QUINN: I'd like to pull 14 in as a new exhibit from the folder the file 15 with the name "Exhibit 2084," please. 16 (Exhibit 15 marked for 17 identification.) 18 BY MR. O'QUINN: 19 Q. So this exhibit is Exhibit 2084 20 for consolidated IPR proceedings 2016-1127 21 through 1132, and this is the transcript of 22 the deposition of Ivan Hofmann in those
131 1 Pharmaceuticals, Inc., Teva Pharmaceuticals 2 USA, Inc. and Akorn Inc. versus Allergan, 3 Inc. for the Patent Trial and Appeal Board, 4 2017, regarding cyclosporin. 5 Do you see that? 6 A. I do. 7 Q. And this was one of the 8 engagements that you led, correct? 9 A. That is correct. 10 Q. And Mr. Hofmann was the 11 testifying expert in that case? 12 A. He was. 13 Q. Did you assist in drafting any 14 declarations Mr. Hofmann may have submitted 15 in those proceedings? 16 A. I would have assisted. There 17 was also a District Court case for 18 cyclosporin, and I would have assisted in 19 both those -- the declaration in the IPR as 20 well as the reports in the District Court 21 case. 22 Q. Would you have assisted with	133 1 proceedings from July 14, 2017. 2 MS. CIPRIANO: So just to 3 clarify the record, this is not Exhibit 2084 4 in these proceedings, correct? 5 MR. O'QUINN: That's correct. 6 MS. CIPRIANO: Okay. So I'll 7 lodge objections based on 401, 402, 403, and 8 hearsay. 9 BY MR. O'QUINN: 10 Q. Would you agree these are the 11 IPR proceedings we were just discussing that 12 is from your CV as one of the engagements 13 that you led? 14 A. I'm assuming it was pulled down 15 correctly. I mean, that is the case caption 16 of the engagement. But assuming that was 17 correct, then, yes, I would agree with that. 18 Q. I'd like to ask you just a few 19 questions about some of Mr. Hofmann's answers 20 in this engagement that you led and in this 21 proceeding that you helped him prepare for. 22 If we can go to page PDF

134 1 page 18 of this transcript, please. And if 2 we could zoom in on the bottom left, page 19 3 of the Minuscript here. I apologize. That's 4 all that's available in the public record. 5 Looking at line 19 of page 19, 6 Mr. Hofmann was asked: "In analyzing 7 commercial success, sales must be considered 8 in light of the relevant market, correct?" 9 And Mr. Hofmann responded: "I 10 think that's generally so." 11 Do you see that? 12 A. I see his testimony there, yes. 13 Q. Do you disagree with 14 Mr. Hofmann's answer there? 15 MS. CIPRIANO: Objection. 16 Foundation. 17 THE WITNESS: I mean, I think 18 asking Mr. Hofmann is the better person to 19 ask on his own testimony. In general, I 20 don't -- I mean, I think sales are a common 21 metric that is analyzed in a commercial 22 success inquiry.	136 1 acrobatics here, but I want to look first at 2 page 47, line 25, at the very bottom left, 3 and then we'll have to jump up. 4 Line 25 says: "So the mere 5 fact that a product is" -- let's go to the 6 upper right -- "marketed doesn't mean that 7 there's a lack of nexus between the 8 commercial performance of Restasis, right?" 9 And Mr. Hofmann responded: "The 10 mere fact that the marketing dollars is 11 greater than zero does not undermine the 12 potential for nexus." 13 Do you see that? 14 A. I see his testimony related to 15 this, yes. 16 Q. And I think as you testified a 17 few minutes ago, you would agree with 18 Mr. Hofmann that just because marketing 19 expenditures occur for a given drug does not 20 mean there can't be a lack of nexus, correct? 21 A. In general, marketing can be -- 22 it doesn't negate that there is or is not
135 1 BY MR. O'QUINN: 2 Q. In the commercial success 3 inquiry you undertook in this case, did you 4 consider the sales and profits of Lumify in 5 light of the relevant market? 6 A. I analyzed what Mr. Jarosz has 7 put forth, which he describes the sales of 8 Lumify as well as certain comparisons with 9 Circana data that relates to comparisons to 10 competing products. 11 Q. Did you attempt to define the 12 proper relevant market yourself in this 13 proceeding? 14 A. In this I don't -- I don't 15 address the relevant market necessarily in my 16 direct -- declaration. What Mr. Jarosz has 17 put forth is the general market related to 18 redness relievers, and he gives his 19 definition of what is listed within that 20 market. 21 Q. If we could go to PDF page 46, 22 please. And we'll have to do a little bit of	137 1 nexus related to it. It's the analysis of 2 the facts and circumstances of a case that 3 make it understanding what -- for instance, 4 in this case what Lumify or Bausch has done 5 for Lumify in the significant marketing and 6 sampling and detailing and social media 7 presence that they have done is the driver of 8 the marketplace performance in that case. 9 I think the facts and 10 circumstances in Restasis is a much different 11 case related to the facts of the patents at 12 issue, which I don't fully remember. This is 13 I think we said 2017. I do remember that 14 case related to primarily a blocking patent 15 argument, which we don't have at issue in our 16 case. So I think cases -- you need to think 17 about facts and circumstances of each case. 18 Q. As a bright-line rule, however, 19 you would agree with it, granting that the 20 facts of certain cases may be different. 21 A. Bright-line rule for what, if 22 you can explain?

138 1 Q. There is no bright-line rule 2 saying that just because marketing 3 expenditures occur for a given nexus is 4 negated, right? 5 A. There is not an ultimate rule 6 or requirement that if you are marketing 7 there cannot be nexus; but you have to look 8 at the marketing, understand the patents, 9 analyze what is happening and what the brand 10 company is doing in order to arrive at any 11 conclusion. You would never just look at the 12 dollars one way or the other and come to a 13 conclusion. You have to do an analysis of 14 more than that. 15 Q. If we can go to PDF page 54 of 16 this document, please. And if we could go 17 down to the bottom left. I'm looking at 18 page 55 of the transcript, line 3. 19 Mr. Hofmann was asked: "So the 20 mere fact that Allergan has offered discounts 21 and rebates does not mean there's no nexus." 22 And Mr. Hofmann says: "The	140 1 compared to OTC. They also exist. It's just 2 they're a different dynamic, and it would 3 impact the market slightly differently, or 4 the product slightly differently. 5 Q. Is there a bright line for how 6 much market share is needed in order for 7 commercial success to be objective indicia of 8 nonobviousness? 9 A. For -- commercial success is of 10 a patent. So I think the analysis, if you're 11 dealing with marketplace success, one, 12 there's not a bright-line test to start with 13 of a number or a certain amount of market 14 share regardless, and it's all related to the 15 relevant market, which is kind of the phrase 16 that is used often. But even if there is a 17 certain level of market share, the analysis 18 you have to look at is nexus, is it related 19 to the patents getting that market share. 20 Q. Would you agree with me that 21 the existence of other competitors in a 22 marketplace generally makes it more difficult
139 1 mere existence does not." 2 And so my question for you is, 3 as a bright-line rule, do you agree with 4 Mr. Hofmann that the mere existence of 5 discounts and rebates does not mean there 6 cannot be nexus? 7 A. In that -- in the case we're 8 dealing with here first on Restasis, I think 9 it is best obviously, as we said before, to 10 ask Mr. Hofmann for the information. 11 However, I understand that we 12 have not -- and I have not offered opinions 13 related to discounts and rebates as a driver 14 of the performance of Lumify, and so I'm 15 focusing on the marketing efforts as the 16 driver of the performance. And I think in 17 the information, I think there could be an 18 information gap between the two here because 19 Lumify is an OTC product as opposed to 20 Allergan's Restasis product was a 21 prescription product where rebates, 22 discounts, chargebacks have a different role	141 1 rather than less difficult for a product to 2 be a commercial success? 3 MS. CIPRIANO: Objection. 4 Incomplete hypothetical. 5 THE WITNESS: I don't think I'd 6 agree with that. I think you have to 7 understand the facts and circumstances of the 8 case. I mean, you could have a situation 9 where maybe there's a lot of products but 10 they're three decades old and it's -- it's 11 just -- I think you got to look at the facts 12 and circumstances of each case to understand 13 what you're dealing with in the competitive 14 landscape for each case. 15 What I've analyzed here for 16 Lumify is focused on a lack of nexus related 17 to the challenged claims of the '245 patent 18 and the challenged claims of the '600 patent 19 as the marketplace performance of Lumify is 20 driven by their significant marketing efforts 21 as well as what was known in the prior art. 22 MR. O'QUINN: You can take this

142 1 exhibit down. 2 BY MR. O'QUINN: 3 Q. Can we go back to Exhibit 1, 4 your '245 declaration, and, again, you can 5 use your hard copy. 6 I'd like to look at 7 paragraph 26 of your declaration, and this is 8 in the section discussing the prior art. Let 9 me know when you're there. 10 A. I'm there. 11 Q. You cite here -- you say, "I 12 understand from the Galanis declaration that 13 the prior art to the challenged claims of the 14 '245 Patent includes 0.03 percent weight by 15 volume brimonidine in Example 1 of 16 U.S. Patent No. 6,294,553 to Gil." 17 Do you see that? 18 A. I do. 19 Q. You then go on to say, "This 20 example (0.03 percent weight by volume 21 brimonidine) compared to the challenged 22 claims of the '245 Patent (0.025 percent	144 1 reference yourself? And I ask because I 2 didn't see it in your materials considered. 3 A. I would have to -- I don't 4 recall if we reviewed the Gil reference as 5 opposed to reviewed Dr. Galanis' analysis and 6 summary of the Gil reference, which is what 7 we cite. 8 Q. But you yourself have not 9 independently reviewed or analyzed the Gil 10 reference at all, correct? 11 A. I have not. That would be more 12 for a technical expert, which is why we rely 13 on Dr. Galanis for that information. 14 Q. So if Dr. Galanis' opinions are 15 incorrect, you would agree that paragraphs 26 16 and 27 are incorrect? 17 MS. CIPRIANO: Objection. 18 Calls for a legal conclusion. Incomplete 19 hypothetical. 20 THE WITNESS: I don't know that 21 I would go that far. I think I'd want to 22 understand when you say "incorrect" what that
143 1 weight by volume brimonidine) demonstrates 2 that it was known in the prior art that the 3 administration of brimonidine in low 4 concentrations was effective to reduce eye 5 redness." 6 Do you see that? 7 A. I do. 8 Q. There's not a citation at the 9 end of that sentence I just read, is there? 10 A. There is not in that, but the 11 paragraph and all the references and support 12 relate to the Galanis declaration as the 13 following sentence does as well. 14 Q. So the fact that the Example 1 15 of Gil demonstrates that it was known in the 16 prior art, that is not your independent 17 opinion; that is fully reliant on 18 Dr. Galanis' opinion? 19 A. That is based on my 20 understanding from Dr. Galanis related to the 21 analysis of what was known in the prior art. 22 Q. Did you review the Gil	145 1 would mean or what is understood by 2 Dr. Galanis that is not -- I don't know what 3 "correct" or "incorrect" means from what 4 you're saying in his declaration, but we have 5 a reliance on Dr. Galanis related for the -- 6 related to this information, which is a 7 portion of our analysis coupled with all the 8 marketing and efforts by Bausch that drive 9 the marketplace performance of Lumify and are 10 unrelated to the challenged claims. 11 BY MR. O'QUINN: 12 Q. If Dr. Galanis' analysis of the 13 Gil reference, which you yourself did not 14 perform, is incorrect, you have no other 15 opinions as to whether the features of the 16 challenged claims were known in the prior 17 art, correct? 18 A. I don't think that's correct 19 because I think we cite more than just the 20 reference of Gil. Throughout the Galanis 21 declaration, we do cite Laskar at times, too, 22 and I think this is focused on the paragraph

146 1 on efficacy. We're talking -- we talk about 2 the other features, safety and tolerability. 3 I want to -- I believe it's referencing the 4 Alphagan prior art. So there's multiple 5 things. 6 So if it's a focus on Gil, I 7 don't know how that would impact. I'd need 8 to understand the opinion on Galanis to 9 understand if there is an impact even on our 10 analysis. 11 Q. But sitting here today, you 12 have not undertaken that analysis, correct? 13 A. No. Our analysis is relying on 14 the Galanis declaration and information and 15 the Laskar declaration for what was known in 16 the prior art that drives the marketplace 17 performance of Lumify coupled with the 18 significant marketing efforts by Bausch for 19 Lumify. 20 Q. Let's go to paragraph 32 of 21 your declaration. You disagree with 22 Mr. Jarosz in that Mr. Jarosz says that the	148 1 success experienced by Lumify." 2 And then you say, "I disagree," 3 right? 4 A. I do disagree with that, yes. 5 Q. And so you're disagreeing with 6 Mr. Jarosz' opinion that marketing is not the 7 primary driver, right? 8 A. There's another clause that you 9 read when you read the full thing, "to the 10 exclusion of benefits attributed to the 11 claimed invention," and I do have the opinion 12 that the marketplace performance of Lumify is 13 not driven by -- I'll use the words here -- 14 the benefits attributed to the claimed 15 invention. That is the full concept of the 16 full sentence in order to -- that I'm 17 disagreeing with. 18 Q. What is the primary driver, in 19 your opinion, of Lumify's marketplace 20 success? 21 MS. CIPRIANO: Objection. 22 Scope.
147 1 marketing of Lumify is not the primary driver 2 of Lumify's marketplace success, correct? 3 A. That is correct. 4 Q. So your opinion is that the 5 marketing of Lumify is the primary driver of 6 Lumify's marketplace success, correct? 7 A. No. I mean, I think I would 8 read the whole report in its totality to take 9 all the evidence of that, that marketing is a 10 significant driver of the marketplace 11 performance of Lumify coupled with the prior 12 art that we were just talking about, but that 13 this, again, goes to a single opinion is not 14 the full answer, and it's the totality of the 15 evidence that gets to the analysis that I've 16 concluded. 17 Q. The second sentence of 18 paragraph 32 reads, "However, the Jarosz 19 Declaration claims that the marketing of 20 Lumify 'is not the primary driver, to the 21 exclusion of the benefits attributable to the 22 claimed inventions, of the marketplace	149 1 THE WITNESS: I think as laid 2 out throughout the entire opinions in the 3 declaration, the two main components that 4 we've talked about most today are the prior 5 art driving the marketplace performance as 6 well as the marketing of Bausch for Lumify 7 that drives the marketplace performance, and 8 those are both two things that the PTAB 9 agreed to in the prior '742 matter as well as 10 significant drivers of the marketplace 11 performance of Lumify in the prior '742 12 patent. 13 BY MR. O'QUINN: 14 Q. Is it your opinion that the 15 claimed inventions of the '245 and '600 16 patents have no effect on the marketplace 17 success experienced by Lumify? 18 A. I've done an analysis to look 19 at what Mr. Jarosz has said are drivers of 20 the marketplace performance, and I have 21 analyzed and come to an opinion what are the 22 drivers of the marketplace performance, which

150 1 are not the challenged claims of the '600 2 patent or the challenged claims of the '245 3 patent, but rather what was known in the 4 prior art coupled with the significant 5 marketing that Bausch has put forth for 6 Lumify. 7 Q. And so I just want to make sure 8 I'm clear. You're saying the drivers are not 9 the challenged claims. 10 Is it your position that the 11 challenged claims and those features have no 12 effect? 13 MS. CIPRIANO: Objection. 14 Asked and answered. 15 THE WITNESS: I don't have that 16 opinion directly. My opinion relates to what 17 are -- what is affecting the sales, and what 18 is affecting the sales is the -- of the 19 marketplace performance of Lumify is the 20 marketing in the -- what was known in the 21 prior art as the drivers of the performance 22 of the products.	152 1 run the business in a way that tries to 2 maximize profits. I feel like that's what 3 every business should aim to do. 4 Q. So would you agree then that 5 profit maximizing entities are making 6 business decisions with the goal of earning a 7 return on their product portfolio? 8 A. I think that's a fair 9 assumption that that would be. There may be 10 situations that that's not the case, but I 11 don't -- I mean, there's other reasons for 12 selling certain products sometimes -- in the 13 pharmaceutical industry to be specific, that 14 you want to sell a portfolio of products even 15 though you know one is losing money but to 16 maintain relationships with customers. So 17 there's lots of facts and circumstances, but 18 generally I would think companies are trying 19 to earn profits. 20 Q. You identify here elsewhere in 21 paragraph 33 some of, quote, many forms of 22 marketing to promote Lumify, and you name
151 1 BY MR. O'QUINN: 2 Q. If we look at paragraph 33, you 3 say, "Generally, the pharmaceutical industry 4 dedicates a significant amount of financial 5 and human resources to marketing and 6 promotion." 7 Do you see that? 8 A. I do. This is what I was 9 referring to earlier when I was testifying. 10 Q. And you say, "Companies such as 11 Bausch of profit maximizing entities." 12 Do you see that? 13 A. I do. 14 Q. How do you define "profit 15 maximizing entities" in that context? 16 A. I mean, I think every company 17 would define it differently, but, look, these 18 are companies that have obligations to their 19 shareholders and to their investors if 20 they're public, if they're private, whatever 21 it may be, to return a profit on what they're 22 doing with the business. So the goal is to	153 1 direct-to-consumer advertising, detailing to 2 eye care professionals, and sampling, among 3 others, correct? 4 A. That is correct. 5 Q. And I think you address this 6 later in your declaration, but you did review 7 the declaration of Mr. John Ferris of Bausch 8 & Lomb in the course of forming your 9 opinions, correct? 10 A. I did, yes. 11 Q. And you saw where Mr. Ferris 12 testified under oath that the sales force is 13 no longer dedicated -- there is no longer a 14 dedicated sales force to Lumify, correct? 15 A. I saw his testimony -- or in 16 the declaration his testimony relating to 17 that, and I think I rebut that later in the 18 declaration, yes. 19 Q. And your rebuttal is chiefly 20 around the idea that the surveys of eye care 21 professionals still mentioned sales force 22 detail as a source of information; is that

154 1 fair? 2 A. That's one component of it, but 3 the idea -- the more informative information 4 related to that is that it is a more recent 5 happening that they may not be detailing 6 anymore, but the analysis that Mr. Jarosz is 7 taking is from 2018 to 2024, and we're maybe 8 dealing with a portion of 2024 where there's 9 not detailing, but all the portion up to that 10 there was detailing, and Mr. Jarosz stated 11 that in his prior deposition in 2022. 12 Q. You mention sampling here, 13 correct? 14 A. Yes, there is sampling. 15 Q. Sampling can only impact the 16 marketplace performance of a product if the 17 product is good enough to make the consumer 18 who has the sample go out and buy it, right? 19 A. I mean, sampling is a form of 20 marketing that drives people to purchase 21 products. The concept of sampling is for 22 them to drive -- to go purchase the product.	156 1 purchase the product, which are not the 2 challenged claims of the '245 patent or the 3 '600 patent. 4 Q. And that answer is premised on 5 the assumption, as we discussed before, that 6 Dr. Galanis is correct about what was known 7 in the prior art, right? 8 A. There's a portion of that. We 9 talked about how it depends on what is known 10 from your hypothetical that something is not 11 right in Dr. Galanis', but I have an 12 understanding from Dr. Galanis and what was 13 put forth in his declaration. 14 Q. And Dr. Laskar talks about 15 Alphagan in his declaration, and you cited 16 that portion in your opinions, correct? 17 A. We could double-check that. 18 That sounds right. I know he focuses on the 19 pH levels in his declaration. 20 Q. Would a free sample of 21 Allergan, Allergan's Alphagan, lead someone 22 to buy Lumify?
155 1 And what we see here is there was not a lot 2 of sampling. As we were just talking about, 3 they were detailing for that long portion of 4 the beginning period the eye care 5 professionals. They were also doing a lot of 6 DTC, but then they significantly ramped up 7 their free samples that they were giving away 8 of Lumify to try to attract new customers for 9 Lumify or even to give to returning customers 10 if there are. 11 Q. But if you were to try a free 12 sample of Lumify and not like it, the 13 provision of that sample does not help with 14 the marketplace performance of Lumify, right? 15 A. If you do not go back to 16 purchase, it would not; but I think we 17 understand the efficacy of it is due to the 18 low-dose brimonidine that's known in the 19 prior art. So the sampling, coupled with 20 what was known in the prior art, that 21 low-dose brimonidine will help with the 22 reduction in redness, is driving people to	157 1 A. I would not think so. I would 2 think the Bausch being out there on the 3 social media, finding followers, and giving 4 away free samples of the Lumify and teaming 5 up with different marketing campaigns is what 6 is driving people to buy Lumify. 7 Q. I asked that because you 8 testified a minute ago that -- you said what 9 was known in the prior art, that low-dose 10 brimonidine will help with the reduction in 11 redness. 12 If that were the case, Alphagan 13 samples would help drive sales of Lumify. 14 Isn't that what Dr. Laskar is arguing? 15 MS. CIPRIANO: Objection to the 16 extent it misstates the record, calls for 17 speculation, outside the scope. 18 THE WITNESS: One, I would have 19 to look to see. I'm not -- Alphagan was not 20 an OTC product, so I don't know that it's 21 available -- how easily available it is to 22 give away at fitness centers or things like

158 1 that as opposed to needing to be provided by 2 a doctor, which is where Lumify started; but 3 Lumify has ramped up -- or Bausch has ramped 4 up their promotion that they can just be out 5 at various events to give samples of Lumify 6 because it is an OTC product. So a sample of 7 Alphagan, to me, would be trying to drive a 8 purchase of Alphagan, not a purchase of 9 another product. 10 BY MR. O'QUINN: 11 Q. Can marketing and promotion 12 make a bad product good? 13 A. Can you describe that a little 14 better of what you're getting at there? 15 Q. Can marketing and promotion 16 alone make a product which a user would 17 normally not buy a positive experience that 18 they will buy? 19 MS. CIPRIANO: Objection. 20 Incomplete hypothetical. 21 THE WITNESS: I mean, I think 22 what marketing and sampling does is allows	160 1 Lumify is, one, aggressive marketing that is 2 driving the performance, and it is based on 3 features that were known in the prior art. 4 BY MR. O'QUINN: 5 Q. What level of marketing makes 6 it aggressive? 7 A. I was actually using 8 "aggressive" because that was the word you 9 used earlier today. It is significant 10 marketing, I think is how we refer to it in 11 the declaration, and that they have done more 12 marketing -- there's a lot more marketing for 13 Lumify than I have seen for a lot of other 14 products. 15 Q. What are some examples of the 16 other products that you're referring to? 17 A. I've analyzed a numerous amount 18 of products in a situation related to eye 19 care. We talked about Combigan earlier. 20 That didn't have the level of marketing that 21 this did. But, again, all products are 22 different. This is just a lot of marketing,
159 1 users to get the product and then purchase 2 the product because of the marketing that was 3 there, and, as we talked about, what was 4 known in the prior art of the low dose of 5 brimonidine being effective. 6 So just because, to your point, 7 a bad product, can it make a -- can it 8 make -- can marketing make a bad product good 9 or however you phrased that, the idea is to 10 understand the marketing behind the product 11 and also that it's not related to the 12 challenged claims of the '600 patent or the 13 challenged claims of the '245 patent, which 14 is the focus of my opinions. 15 BY MR. O'QUINN: 16 Q. It's your opinion that the 17 marketing that Bausch & Lomb did for Lumify 18 is unrelated to the claimed features of the 19 '600 patent and the '245 patent? 20 MS. CIPRIANO: Objection to the 21 extent it misstates the declaration. 22 THE WITNESS: The marketing for	161 1 and it's very unique marketing. I haven't 2 seen -- what Bausch has done for Lumify is 3 different than what I have seen in a lot of 4 products with their very significant presence 5 in social media, in the TikTok challenges, 6 and things that they have done. I just 7 haven't seen that in other products. 8 Q. How many products have you 9 testified on that are over-the-counter 10 products? 11 A. In my testimony, I don't -- the 12 ones we talked about earlier today were not 13 over-the-counter products. We have analyzed 14 a handful of over-the-counter products 15 throughout my time at Gleason. The majority 16 of products are prescription based, but we 17 have done a significant amount of 18 over-the-counter products as well over time. 19 None that I had testified to, though. 20 Q. Well, I guess in that answer at 21 one point you said "a handful of 22 over-the-counter products" and then "a

162 1 significant amount of over-the-counter 2 products." How many is it? 3 A. I was using subjective terms. 4 I would say we've probably analyzed at least 5 ten or more over-the-counter products over 6 time. It is not a significant focus of the 7 part of the business, whereas I think more so 8 there are more in prescription-based 9 products. Also a decent amount of medical 10 devices but ... 11 Q. And you've been at Gleason 12 since 2011; is that right? 13 A. 2007, I believe. 14 Q. Sorry. How many of 15 over-the-counter products that you've 16 analyzed since you've been at Gleason were 17 before TikTok became a social media platform? 18 A. I'm not totally familiar 19 because I don't know -- I don't know when 20 TikTok became a social media platform, so 21 it's -- I mean, on average, I said it's about 22 ten. I've been at Gleason for 18 years.	164 1 performance of Lumify. 2 MR. O'QUINN: Let me tell you 3 where I'm at right now. I think I have 4 probably maybe 30 to 40 minutes remaining. 5 We've been on another hour. I don't know if 6 you would like to take a lunch break now of 7 30 minutes or so and then we finish up or if 8 you would just like to take a short break and 9 power through. I'm open to whatever you 10 would prefer. 11 THE WITNESS: I'm fine if we 12 want to do a ten-minute break and then finish 13 up and then we could all have lunch 14 afterwards. I'm okay with that process. 15 MR. O'QUINN: All right. So 16 why don't we take a ten-minute break now. 17 THE WITNESS: Okay. Thank you. 18 THE VIDEOGRAPHER: Off the 19 record at 12:21. 20 (Brief recess.) 21 THE VIDEOGRAPHER: On the 22 record at 12:32.
163 1 Call it one every two years. So, I mean, you 2 could probably judge, if I'm averaging 3 throughout time, but I -- and I don't have -- 4 I've never cataloged or taken a look at that 5 as a group of analyses that we performed. 6 Q. A moment ago you used the term 7 "significant marketing," and you said that's 8 how you referred to it in your declaration. 9 What is the definition of 10 "significant"? 11 A. I think, again, it's an 12 analysis of what has been done in looking at 13 all the evidence and the amount of times that 14 Bausch touts what they have done 15 marketing-wise trying to drive products. 16 It's a big important -- we cite a lot of 17 their earnings call transcripts. It's an 18 accumulation of evidence that we have seen 19 that we've determined we would state that 20 that is significant amount of marketing. 21 And, again, I think the PTAB in the '742 has 22 agreed that marketing was a driver of the	165 1 BY MR. O'QUINN: 2 Q. Mr. Masztak, does marketing, 3 advertising, and promotion become significant 4 at a particular dollar amount? 5 A. I don't think necessarily. I 6 think it has to be analyzed in the context 7 and understanding the market and what is 8 happening. There's not -- similar to what we 9 talked about on -- I think you referred to 10 sales, is there a specific dollar amount. 11 There's not a specific dollar amount. It's 12 an analysis of the evidence to understand 13 what is driving the product. 14 Q. And does marketing, 15 advertising, and promotion become significant 16 at a particular percentage of net revenue, 17 for example? 18 A. And how are we referring to net 19 revenue in general there? 20 Q. Let's do the same as how we 21 referred to net sales earlier, gross revenue 22 minus discounts, rebates, returns,

166 1 chargebacks. 2 A. Okay. There's -- I mean, 3 there's not a specific dollar amount. 4 There's not a specific percentage. It's an 5 analysis of what's happening in the market, 6 what types of promotions, and what it is that 7 we have gotten to the opinion that it is 8 driving the marketplace performance of 9 Lumify. 10 Q. Looking at your declaration, 11 I'd like to look at paragraph 40, please. 12 Let me know when you're there. 13 A. I'm there. 14 Q. This paragraph is discussing 15 the Lumify Eye Illuminations products, 16 correct? 17 A. Yes, it is. 18 Q. And is it your opinion that 19 advertising and promotion that Bausch & Lomb 20 spent on the Lumify Eye Illuminations 21 products helped drive the marketplace 22 performance of Lumify eye drops?	168 1 District Court? 2 A. Sorry. No. I was referring to 3 the deposition transcripts. 4 Q. Understood. 5 Would it surprise you to learn 6 that counsel for Dr. Reddy's told the 7 district judge on the record in those 8 proceedings that, quote, Bausch's ecosystem 9 claim for the LEI beauty products is 10 unsupported? 11 MS. CIPRIANO: Objection. 12 Relevance. Foundation. 13 THE WITNESS: I don't know what 14 that's in reference to or what the statement 15 was, so I don't have an opinion on that. 16 BY MR. O'QUINN: 17 Q. Did you review or hear of 18 testimony from Dr. Reddy's damages expert in 19 those proceedings that, quote, one would have 20 thought if you're going to launch this 21 franchise, these LEI products, and you 22 thought a lot of the sales were going to be
167 1 A. So in that I think it is 2 driving a portion of that and my -- more the 3 point that I'm pointing out is Dr. -- or 4 Mr. Jarosz didn't acknowledge that and 5 mention the high level of promotion that was 6 done on the Eye Illumination products for the 7 couple years there, and they are all labeled 8 and branded "Lumify" that is helping and put 9 in the beauty aisle next to Lumify and trying 10 to drive it as a suite of products. I can't 11 remember the words Mr. Ferris used when he 12 was describing it in his deposition, though. 13 Q. Did you review the testimony 14 from the preliminary injunction hearing in 15 this case in forming your opinions? 16 A. There were certain transcripts 17 I did review in conjunction with the 18 preliminary injunction case. 19 Q. I didn't see those in your 20 materials considered. You may have reviewed 21 some deposition transcripts. Did you review 22 the actual transcript of the hearing in	169 1 generated by Lumify users, that there would 2 be some sort of documentation backing that 3 up? 4 A. I have not reviewed that 5 testimony in conjunction with my opinions. 6 What I have put forth when I'm discussing the 7 LEI products relates to documents and 8 information from Bausch related to that. 9 Q. But is it your opinion that the 10 Lumify Eye Illuminations branded products are 11 driving sales of Lumify eye drops? 12 A. What I am addressing is that 13 Mr. Jarosz has failed to account for that 14 that is potentially helping the Lumify 15 product sales in that all these products are 16 labeled "Lumify"; they are all marketed and 17 included in the same aisle; and it's 18 something that should be considered in a 19 complete analysis. 20 Q. I guess my confusion is just 21 that Dr. Reddy's has argued the opposite in 22 these same District Court proceedings between

170 1 these same parties on these same patents, and 2 so it's odd that that is a fault of 3 Mr. Jarosz when your client has already taken 4 that position; would you agree? 5 MS. CIPRIANO: Objection, 6 foundation, and to the extent it misstates 7 the record. 8 THE WITNESS: I'm not familiar 9 with the full trial testimony and what is 10 being said by you said their damages expert 11 in that part of the trial, but it doesn't -- 12 it sounds -- what I'm pointing out is there 13 were call it \$25 million, at least, of 14 marketing, advertising, and promotion dollars 15 that were for Eye Illumination that 16 Mr. Jarosz did not address. 17 BY MR. O'QUINN: 18 Q. Were you aware that the full 19 trial testimony from the preliminary 20 injunction proceedings was evidence of record 21 in these IPRs? 22 MS. CIPRIANO: Objection to the	172 1 A. That is correct, yes. 2 Q. And you reviewed that P&L 3 statement in forming your opinions? 4 A. I did. 5 Q. And you reviewed Mr. Ferris' 6 testimony throughout this case, correct? 7 A. When you say "throughout this 8 case," I mean, I've seen his deposition, I 9 think two of them. We can look at my 10 appendix. But I've seen his deposition and 11 declaration, yes. 12 Q. And were you aware from that 13 testimony that Bausch is debuting another 14 version of Lumify eye drops in 2025? 15 MS. CIPRIANO: Objection. 16 Foundation. 17 THE WITNESS: I have not seen 18 that in the evidence. If there's something 19 in the record specifically that we want to 20 look at, we can. 21 BY MR. O'QUINN: 22 Q. Mr. Ferris testified about
171 1 extent it misstates the record. 2 THE WITNESS: I'm not -- it is 3 not part of the exhibits and listed in our 4 appendix that we reviewed in conjunction with 5 our opinions in this matter. 6 BY MR. O'QUINN: 7 Q. I'd like to go to paragraph 46 8 on page 35 of your report. 9 A. I'm there. 10 Q. The very last sentence on that 11 page starts -- and we can go to -- flip the 12 page as we go -- "Additionally, Bausch is 13 forecasting an increase to the advertising 14 and promotion of Lumify (the low-dose 15 brimonidine drops and not the Eye 16 Illuminations Products) in 2025 to 17 approximately \$36.5 million." 18 Do you see that? 19 A. I do. 20 Q. And that you cite there to 21 Exhibit 2072, which is the Bausch & Lomb P&L 22 statement, correct?	173 1 Lumify Preservative Free in his testimony. 2 Do you remember reviewing that portion of his 3 testimony? 4 A. I remember hearing about Lumify 5 Preservative Free, yes, which I didn't view 6 that -- I didn't think that was an Eye 7 Illumination product, but maybe that is. I 8 just haven't -- I didn't see it linked like 9 that. 10 Q. It's an eye drop, correct? 11 A. That was my understanding. 12 Q. And did you analyze whether the 13 Lumify Preservative Free product would be 14 covered by the challenged claims of the '245 15 or '600 patent? 16 MS. CIPRIANO: Objection. 17 Outside the scope. 18 THE WITNESS: Mr. Jarosz hasn't 19 asserted such because I don't think the sales 20 of that have commenced in the amount of -- in 21 the analysis that he put forth, and his 22 analysis covers up to a point in 2024, and

174 1 that's the analysis I'm rebutting, so the 2 preservative-free Lumify would not have been 3 included in that analysis. 4 BY MR. O'QUINN: 5 Q. I guess I'm speaking more about 6 the sentence we just read from your 7 declaration where you're pointing to the 8 forecasted increase of marketing in 2025 for 9 Lumify Drops, excluding Eye Illuminations, as 10 a significant advertising expenditure by 11 Bausch & Lomb, correct? 12 A. I was pointing that out because 13 Mr. Jarosz' statement was that the 14 advertising and promotion for Lumify Drops 15 had been declining. So I was making a point 16 to acknowledge that it is projected to 17 increase. And even in the declining, they've 18 always been right around 30 some million 19 almost every year, 30 to 40 million, 20 actually, almost every year. 21 Q. But there's nothing in your 22 declaration about the fact that there is a	176 1 Mr. Ferris' testimony and statements in his 2 Declaration are misleading in regards to the 3 impact that marketing and promotion has had 4 (and continues to have) on the marketplace 5 performance of Lumify." 6 Do you see that? 7 A. I do. 8 Q. There's no citation at the end 9 of that sentence, correct? 10 A. There's not. 11 Q. What is the basis for your 12 statement that Mr. Ferris' testimony and 13 declaration are misleading? 14 A. I think it's the preceding 15 information where the statement Mr. Ferris is 16 making is that detailing is no longer 17 happening for Lumify Drops and the sales 18 force have ceased. And what I'm pointing out 19 is -- and I've described this earlier -- 20 Mr. Jarosz is putting forth an opinion that 21 from 2018 to 2024, discussing the marketplace 22 performance of Lumify, and during that period
175 1 Lumify Preservative Free product debuting in 2 2025 that could explain the increase in 3 marketing? 4 A. There's nothing in the 5 declaration that states that, and I don't 6 think I've seen anything in the record, 7 unless you could point me to it, that the P&L 8 that they have developed the 36.5 relates to 9 or how much relates to the preservative free. 10 I have not seen that. 11 Q. You don't think sitting here 12 today what percentage that is, right? 13 A. Nor did -- Mr. Jarosz didn't 14 address it at all, so I was pointing out that 15 there's an increase in Lumify, and I've not 16 seen evidence that it even relates to Lumify 17 Preservative Free at all or what portion. 18 Q. Go to paragraph 50, please. 19 A. I'm there. 20 Q. The last sentence of 21 paragraph 50 reads, "Bausch may have recently 22 reduced its detailing efforts for Lumify, but	177 1 the majority of the period they were 2 detailing Lumify, and even the surveys are 3 evidence that sales reps were visiting 4 optometrists and ophthalmologists so to say 5 recently when an analysis of commercial 6 success is based on the historical analysis 7 of the financial performance and what drove 8 those sales. 9 Q. The sales of Lumify have grown 10 on a year-by-year basis every single year 11 that Lumify has been in the market in the 12 U.S., right? 13 A. I believe that's accurate if we 14 want to look at one of the exhibits, but I 15 believe that's correct. 16 Q. I'd like to look at 17 paragraph 77 from your report. 18 A. I'm there. 19 Q. You opine here that "the 20 decision by a company to file an ANDA (and 21 license in an ANDA) with respect to a 22 reference listed drug merely reflects the

178 1 normal course of business for generic 2 pharmaceutical companies and does not 3 necessarily reflect the success of the 4 reference product." 5 Do you see that? 6 A. I do see it. 7 Q. In this particular case, 8 Dr. Reddy's bought the ANDA for generic 9 Lumify from Slayback; is that your 10 understanding? 11 A. I believe that's accurate. I 12 know it was described as a license in the 13 article I think that we cited for that, but 14 that Dr. Reddy's has the rights to the ANDA 15 for Lumify. 16 Q. And did you review the press 17 release by Dr. Reddy's upon gaining rights to 18 Slayback's ANDA? 19 A. I know we reviewed a handful of 20 articles. I don't know which specific one 21 you're referring to. 22 Q. I, again, just didn't see it in	180 1 Q. And you have no understanding 2 of the financial terms underlying Dr. Reddy's 3 license from Slayback, correct? 4 A. I have not seen that. That is 5 correct. 6 MR. O'QUINN: Just for 7 housekeeping, I'd like to introduce a couple 8 of other exhibits. The first one in the 9 folder has the file name "Exhibit 1198." 10 It's towards the bottom of the folder. 11 (Exhibit 16 marked for 12 identification.) 13 BY MR. O'QUINN: 14 Q. This is a declaration of John 15 C. Jarosz from IPR 2022-142 which pertained 16 to the '742 patent we've been discussing 17 today. 18 You've reviewed this 19 declaration as part of forming your opinions, 20 correct, Mr. Masztak? 21 A. I have reviewed this 22 declaration. I am the responding -- I'm
179 1 your facts or, I mean, your materials 2 considered which is why I was asking, but we 3 can come back to that. 4 Would Dr. Reddy's shareholders 5 allow it, as a profit-generating entity, to 6 invest in any project other than one that was 7 forecasted to be successful? 8 MS. CIPRIANO: Objection. 9 Calls for speculation. Outside the scope. 10 THE WITNESS: I don't know what 11 Dr. Reddy's shareholders would demand of the 12 board or of management, but part of 13 Dr. Reddy's business is to try to work on 14 products, and this is one that they decided 15 to license from Slayback. 16 BY MR. O'QUINN: 17 Q. And you have no understanding 18 of the reasons behind Dr. Reddy's decision to 19 license from Slayback? 20 A. I am not aware of the decisions 21 or I have not spoken to Dr. Reddy's about 22 their reasoning behind that.	181 1 responding to the declarations of Mr. Jarosz 2 for the '245 patent and the '600 patent, 3 though, not the '742 patent. 4 Q. I understand. I just -- I know 5 that several times today you've referred to 6 what the board has already decided with 7 respect to '742, and so I just want to make 8 sure that in conjunction of your review of 9 that you also reviewed this declaration, and 10 the answer to that is yes, right? 11 A. I have reviewed this 12 declaration, but I'm responding to the 13 declaration -- the newer declarations that he 14 has issued related to the '245 patent and the 15 '600 patent. 16 Q. It's your opinion that the 17 evidence that Mr. Jarosz is citing in the 18 '245 and the '600 is essentially the same as 19 the evidence that he cited in the '742, 20 right? 21 A. There are similar arguments, 22 yeah. I mean, the data has all been updated.

182 1 He's updated numerous different paragraphs 2 here and there, and he's removed certain 3 things that were in the '742 that are not in 4 the '245 and the '600, so I don't know 5 that -- if it's -- it's not identical. I'm 6 definitely aware of that. There's 7 differences. 8 Q. In the reply brief filed by 9 petitioners that we looked at earlier today, 10 there was a sentence saying, "Presenting 11 essentially the same arguments from the '742 12 IPR, patent owner again fails to establish a 13 nexus between the claims and patent owner's 14 alleged secondary considerations." 15 Do you recall that? 16 A. I do recall that, yep. 17 Q. If we could look at the very 18 last page of this document on the screen, PDF 19 page 161, the last appendix in the '742 20 declaration for Mr. Jarosz is Appendix 27. 21 Do you see that? 22 A. I do see that.	184 1 of this document now, the last page. There's 2 an Appendix 28 in this declaration entitled 3 "Lumify Advertising and Promotional Expense 4 as a Share of Gross Net Revenue 2018 to 5 2024." 6 Do you see that? 7 A. I do see it. 8 Q. There was no appendix 9 equivalent to this one in the '742 10 declaration by Mr. Jarosz; you would agree? 11 A. That was not in the '742 12 declaration that I recall. 13 Q. So this data here was not 14 before the Patent Trial and Appeal Board 15 during the 142 IPR proceeding for the '742 16 patent? 17 A. I -- 18 MS. CIPRIANO: Objection. 19 Calls for speculation. 20 THE WITNESS: Yeah, I don't 21 know exactly what was put in front of them 22 for review. This was not a part of the
183 1 MR. O'QUINN: Okay. I'd like 2 to introduce one more exhibit, and that is 3 Exhibit 2229, please. 4 (Exhibit 17 marked for 5 identification.) 6 BY MR. O'QUINN: 7 Q. And this is the declaration of 8 Mr. Jarosz for the 467 IPR proceeding 9 pertaining to the '245 patent, and this is 10 one of the declarations you are responding 11 to, right? 12 A. That is correct, yes, as well 13 as the '600. 14 Q. Right. If we could go to 15 page 179 of this document. This is an 16 updated version of the same Appendix 27 we 17 just looked at; would you agree? 18 A. It appears to be that way, yes. 19 This goes through the end of 2023, and I 20 believe the other one should be sometime in 21 '22 if we want to go back to it and look. 22 Q. And if we could go to page 180	185 1 Jarosz declaration for the '742, though. 2 This is -- he did include this for the '245 3 and the '600, and I think we were talking 4 earlier he used the term "gross net revenue" 5 which is not consistent with what you and I 6 were talking about today as net sales, and 7 there were other critiques and information I 8 think I mention in my declaration about that. 9 BY MR. O'QUINN: 10 Q. Do you consider the nexus of 11 Lumify's marketplace performance to the 12 claims of the '245 patent on a claim-by-claim 13 basis? 14 A. I believe it's -- it will be 15 analyzed on a claim-by-claim basis. 16 Mr. Jarosz doesn't really explicitly even say 17 which claims he is dealing with in the '245 18 patent or the '600 patent. He references 19 what the challenged claims are but that 20 Lumify is an embodiment of certain claims, 21 but it's not clear what he's referring to in 22 that, but I do understand it would be dealt

186 1 with on a claim-by-claim basis. 2 Q. But have you yourself performed 3 an analysis of nexus on a claim-by-claim 4 basis? 5 A. I have analyzed the drivers of 6 the marketplace performance of Lumify as we 7 refer to today related to marketing and the 8 prior art as the primary components of what 9 we've been dealing with in talking about 10 today, but -- and that they are not the 11 asserted or the challenged claims of the '245 12 patent or the challenged claims of the '600 13 patent. 14 Q. How did you prepare for today's 15 deposition, Mr. Masztak? 16 A. I reviewed information for the 17 case in preparation for the deposition and 18 also met with counsel. 19 Q. Approximately how long did you 20 meet with counsel? 21 A. Today's Friday. On Wednesday 22 and Thursday. I think about an hour each day	188 1 CERTIFICATION 2 3 I, Patricia R. Frank, a Registered Merit 4 Reporter, Certified Realtime Reporter, and Notary 5 Public in and for the Commonwealth of Pennsylvania, 6 do hereby certify that I reported the deposition in 7 the above-captioned matter; that said witness was 8 duly sworn by me; that the foregoing is a true and 9 correct transcript of the stenographic notes of 10 testimony taken by me in the above-captioned matter. 11 I further certify that I am not an 12 attorney or counsel for any of the parties, nor a 13 relative or employee of any attorney or counsel 14 connected with the action, nor financially 15 interested in the action. 16 17 18 _____ 19 Patricia R. Frank, RMR #9764 20 Notary ID 1279722 Exp. 10/23/2025 21 22 Dated: April 6, 2025
187 1 maybe. 2 Q. Did you review all of the 3 documents cited in Appendix 1 of your 4 declaration in preparation for the 5 deposition? 6 A. During the course of the 7 engagement, I or the team would have reviewed 8 all of the documents. I reviewed a 9 substantial portion of them in preparation 10 for this deposition. I don't know that I 11 would say I probably hit all of them, but I 12 would have seen them in the process of doing 13 the analysis and report or declarations. 14 MR. O'QUINN: Thank you very 15 much, Mr. Masztak. I don't have any other 16 questions for you today. 17 THE WITNESS: Thank you. 18 MS. CIPRIANO: I do not have 19 any questions for Mr. Masztak. 20 THE VIDEOGRAPHER: Thank you. 21 We're concluding the deposition at 12:56 p.m. 22 * * * * *	

A	additional	75:10 79:2	139:20	109:9,14
a.m 2:6 7:11	62:9	136:17 157:8	156:21	110:6 121:21
AB-rated	Additionally	163:6	Allergan/Alc...	122:9 123:13
125:20	171:12	agree 23:18	33:12	124:13,14
able 20:17	address 8:15	37:20 55:6	allow 179:5	127:15 137:1
67:10 77:13	8:17 70:8	55:21 71:1,4	allows 158:22	138:13
above-capti...	85:20 92:20	71:8 86:17	Alphagan	140:10,17
188:7,10	135:15 153:5	102:11,21	32:20 73:4	143:21 144:5
academic	170:16	103:9,10	146:4 156:15	145:7,12
21:20	175:14	114:13 120:8	156:21	146:10,12,13
access 12:13	addressed	125:11,15	157:12,19	147:15
90:9	72:19 96:13	127:22	158:7,8	149:18 154:6
account	96:14,15,16	128:16	AMM 88:21	163:12
169:13	addressing	133:10,17	89:11	165:12 166:5
accountant	100:8 169:12	136:17	amount 78:10	169:19
22:11	adjusted 18:22	137:19 139:3	78:13 83:18	173:21,22
accounting	adjustments	140:20 141:6	122:22	174:1,3
23:3	18:17 46:5	144:15 152:4	140:13 151:4	177:5,6
accumulated	administering	170:4 183:17	160:17	186:3 187:13
84:15	67:14 69:5	184:10	161:17 162:1	analyze 40:14
accumulation	administrati...	agreed 14:18	162:9 163:13	46:20 51:8
163:18	23:2 143:3	109:4 149:9	163:20 165:4	57:19 70:16
accurate 11:2	adopt 14:19	163:22	165:10,11	94:14 96:19
20:15 90:19	15:10	agreeing	166:3 173:20	100:16
177:13	adopting	15:10	analogous	130:15 138:9
178:11	19:14	ahead 11:12	106:21	173:12
acknowledge	advanced	11:19 14:1	110:10	analyzed 39:5
167:4 174:16	86:15 87:1	111:2	117:17	39:8 58:14
acquisitions	advertising	aim 152:3	analyses	63:8 69:17
38:5	24:12 125:11	aisle 167:9	163:5	77:22 80:18
acrobatics	126:17 153:1	169:17	analysis 14:17	82:21 83:21
136:1	165:3,15	Akorn 131:2	46:4,8 55:12	99:11 134:21
action 188:14	166:19	Alcon 32:9	56:3,11 62:5	135:6 141:15
188:15	170:14	33:6,8	66:7 71:12	144:9 149:21
active 33:17	171:13	Alex 45:11	71:16 73:13	160:17
34:20 62:16	174:10,14	alleged 114:20	74:2 77:8	161:13 162:4
67:19 68:22	184:3	116:1 182:14	83:20 84:16	162:16 165:6
72:4	agent 38:21	allegedly	85:6 93:16	185:15 186:5
actual 59:18	aggregation	92:22	95:5 96:10	analyzing 70:2
59:20,22	96:10 107:7	Allergan 32:8	97:15 98:4	81:6,20
75:13,15	aggressive	32:8 131:2	98:19 99:3,5	94:21 98:11
167:22	120:7 125:4	138:20	99:7,16	124:22 134:6
added 21:14	160:1,6,8	156:21	100:17 104:6	and/or 4:9
addition 66:16	ago 51:6 52:2	Allergan's	106:8 108:5	45:6

ANDA 48:4 177:20,21 178:8,14,18 answer 10:8 10:11,18,19 77:10 92:10 93:14 99:1 134:14 147:14 156:4 161:20 181:10 answered 100:12 126:20 150:14 answers 11:2 133:19 Anthony 1:16 2:1 4:4,11 5:3 7:3 8:8 8:16 42:15 anymore 154:6 apologize 134:3 appeal 1:3 9:8 10:3 27:17 52:2,8,15 55:2,22 56:8 56:16 57:2 65:21 105:21 131:3 184:14 appealed 52:12 Appeals 87:18 appearing 3:2 14:11 appears 20:9 90:8 101:19 114:14 115:16 183:18 appellate 87:19 appendix	17:14,18 18:1 44:20 44:21 45:5 45:14 117:8 117:9 118:8 119:10 171:4 172:10 182:19,20 183:16 184:2 184:8 187:3 applications 39:3 applied 78:21 81:1 apply 118:1 applying 81:20 appointments 22:8 apportion 86:5 94:2,22 96:1 99:22 106:7 108:20 115:22 apportioned 123:2,6 apportioning 109:18 apportionm... 100:10 107:1 107:14 108:11 110:19 119:4 123:1 approached 46:8 appropriately 85:19 approximately 8:22 19:5 38:7 171:17 186:19 aprepitant 25:21 26:8 93:18 94:9	April 1:17 2:6 3:22 7:10,15 188:20 argued 108:11 108:12,18 169:21 arguing 54:14 157:14 argument 107:2,11 110:11 111:17 114:12 117:18 137:15 arguments 28:21 51:19 76:3 86:20 107:14 114:17 181:21 182:11 arms 38:3,4 arrive 99:16 100:18 121:4 138:10 art 57:7 58:4 61:17 62:8 62:18 63:2 64:5 66:12 70:4 71:18 72:5,10,13 73:12,17 74:8,17 76:1 83:4 85:13 86:13 99:13 123:13 129:1 141:21 142:8 142:13 143:2 143:16,21 145:17 146:4 146:16 147:12 149:5 150:4,21	155:19,20 156:7 157:9 159:4 160:3 186:8 article 178:13 articles 178:20 aside 15:19 19:18 asked 10:20 13:6 31:17 31:22 41:21 42:4,5 91:4 92:19 93:9 93:11 100:12 100:15 126:20 134:6 138:19 150:14 157:7 asking 25:17 36:16 55:19 99:1 124:5 134:18 179:2 assert 101:3 asserted 52:22 78:1 79:14 80:7 99:19 109:12 173:19 186:11 asserting 97:17 98:9 99:2 100:14 123:8 assertion 109:14 assessment 97:10 assigned 47:15 122:5 assist 33:2 131:13 assisted 131:16,18,22 132:10	assume 10:12 assuming 133:14,16 assumption 152:9 156:5 assumptions 74:2 Atlanta 3:18 attached 4:8 attained 123:20 124:10 attempt 135:11 attended 38:18 attorney 38:16 188:12,13 ATTORNEYS 3:4,9 attract 155:8 attributable 81:11 82:15 83:11,19 97:11 98:6 104:15 120:17 121:15 147:21 attribute 93:17 attributed 148:10,14 audio 79:15 available 89:16 91:19 92:1 95:12 134:4 157:21 157:21 Avenue 3:6 average 162:21 averaging 163:2 aware 20:18
--	---	---	---	--

87:16,20	161:16 177:6	31:11,18	Book 86:8	115:11
88:6 109:7	basis 81:15	32:1,21	92:21 94:3	164:20 182:8
110:17	119:3 176:11	33:14,20	94:15,22	bright 140:5
170:18	177:10	35:9 37:6	96:2,7 100:2	bright-line
172:12	185:13,15	43:4 45:16	100:5 108:20	137:18,21
179:20 182:6	186:1,4	52:16 76:14	109:19	138:1 139:3
B	Bausch 3:10	76:19,21	booked 120:15	140:12
B 4:7 84:10	8:2 34:20	86:19 87:8	121:13	brimonidine
85:16 86:14	47:22 57:8	98:19 104:1	Boston 5:19	32:16 33:16
86:16 114:8	58:5 66:18	114:1 115:6	111:11	34:10,14,19
115:17	70:5 71:21	116:20 132:9	116:12	35:1,9,18
bachelor's	76:2 85:22	146:3 162:13	bottom 40:9	57:6 58:3
23:1	92:13 120:6	177:13,15	93:8 134:2	62:15 63:3
back 17:10	120:12,14,18	178:11	136:2 138:17	63:13,19
19:18 32:2	121:12,15,21	183:20	180:10	64:1,5,9,13
43:7 44:17	122:14	185:14	bought 178:8	64:22 65:5,8
75:8 84:4	123:16	bench 87:13	Boulevard	65:12,17
86:19 89:19	130:10,12	90:1	8:17	66:1,7 67:18
91:18 93:10	137:4 145:8	benefits	bounds 63:14	68:21 69:6,7
112:9,16	146:18 149:6	147:21	box 20:17	72:3 74:7
114:15	150:5 151:11	148:10,14	brand 36:20	142:15,21
129:22	153:7 157:2	benzalkonium	37:7,9 38:3	143:1,3
130:18 142:3	158:3 159:17	67:21	123:22	155:18,21
155:15 179:3	161:2 163:14	best 139:9	125:17	157:10 159:5
183:21	166:19 169:8	better 104:8	126:13 127:3	171:15
backing 169:2	171:12,21	109:8 129:20	127:3,5,7	bring 43:11
bad 158:12	172:13	134:18	138:9	89:4 100:20
159:7,8	174:11	158:14	branded	111:2 113:2
balance	175:21	big 163:16	123:19	113:10
103:14	Bausch's	billing 18:21	126:14 167:8	Bryson 87:14
107:12	168:8	bit 86:13,14	169:10	87:17,21
base 34:21	beauty 122:15	93:15 135:22	break 10:5,7,9	88:11,16
based 47:12	167:9 168:9	black-and-w...	59:1 112:8	101:12 102:4
52:6 53:2	beginning	104:6	112:20,22	102:11,21
54:6 71:16	7:19 50:10	blocking	113:19	103:8 104:22
71:17,19	114:16 155:4	137:14	116:18	105:11,19
72:15 73:3	begins 7:2	board 1:3 9:8	117:11,22	106:5 107:3
77:21 89:2	11:21 14:16	10:3 52:2,8	164:6,8,12	107:20,22
90:10 117:6	42:10 43:12	55:3,8,22	164:16	108:4 109:20
120:11	90:7	56:8,16 57:2	brief 59:5	110:5
121:21	behalf 7:13,15	57:10,11	110:15 112:1	Bryson's
123:11 133:7	36:6	65:21 131:3	112:12 113:1	106:2,15
143:19 160:2	believe 18:2,3	179:12 181:6	113:17,20	Building 3:6
	30:22 31:6	184:14	114:16 115:7	built 83:20

business 8:15 8:16 23:2 151:22 152:1 152:3,6 162:7 178:1 179:13 buy 154:18 156:22 157:6 158:17,18	campaigns 157:5 caption 133:15 care 153:2,20 155:4 160:19 career 22:2 24:5 Carter 3:22 7:15 case 1:11,14 7:8 15:9 17:1 18:10 20:20 25:14,19 26:2,6,16,21 26:22 27:8 27:12 28:1 29:2,6,7 32:7 32:15 33:3 33:12,12,15 35:12 40:16 42:4,6 45:1,7 46:22 47:4 50:1 51:10 55:17 70:7 75:6 78:2,3 79:5,8 80:4,7 80:10,13,15 80:21 81:3 87:1,4,7,11 90:8,19 92:5 92:16 94:1 94:18,18 96:20 101:14 101:17,19 102:8 103:1 103:6,11,13 105:10 107:11 108:8 109:22 110:6 110:15,18,22 117:8,13 118:2,8,13 118:19 119:3 119:9,11	120:4 124:14 125:22 127:11,19 128:2,19,22 129:6 130:6 130:22 131:11,17,21 132:12 133:15 135:3 137:2,4,8,11 137:14,16,17 139:7 141:8 141:12,14 152:10 157:12 167:15,18 172:6,8 178:7 186:17 cases 28:9,13 29:3,10 34:1 34:13 36:20 79:19 86:16 86:21 87:2 95:21 96:5 96:11,11 106:20,21 110:10 117:17 137:16,20 cataloged 163:4 categorized 36:9 causal 82:7 caveats 126:22 ceased 176:18 centers 157:22 certain 16:14 18:17 46:5 47:10 62:3 127:3 129:12 132:6 135:8 137:20	140:13,17 152:12 167:16 182:2 185:20 certification 22:18,20 certifications 23:9 certified 2:3 22:10 188:4 certify 188:6 188:11 chain 4:14 challenge 48:15 98:12 challenged 47:10 52:4 53:13,18,21 53:22 54:10 54:21,22 55:5,15 56:12,18 58:15,16,19 58:20 66:14 71:14,15 73:18,19 74:19,20 85:1 86:7 95:9 96:21 97:7,8,19 98:6,7,14,15 99:10,18 100:4,8,19 123:11 125:1 125:2 129:3 129:4 141:17 141:18 142:13,21 145:10,16 150:1,2,9,11 156:2 159:12 159:13 173:14 185:19	186:11,12 challenger 37:13,15 challengers 36:11,13 37:16,19 challenges 161:5 challenging 47:7,19 chance 45:17 change 16:16 122:3 changing 44:3 chargebacks 121:4,12 139:22 166:1 chemothera... 94:10 chiefly 153:19 chloride 67:21 Cinvanti 91:6 91:13 92:6 92:22 103:2 104:14,18 105:11 Cipriano 3:5 8:4,5 10:16 20:21 27:13 33:18 35:5 35:20 37:21 48:1,11 51:16 52:19 54:16 55:10 56:4,21 57:14 61:7 61:18 62:19 63:15 65:1 65:13 66:3 68:7 70:12 72:6 73:6 74:10 75:17 77:18 79:21 82:18 83:15
---	--	--	--	--

88:2,13,22	116:11 143:8	41:12,14	13:2	56:17 57:4
91:15 92:7	176:8	46:20 47:1,4	cleanly 121:9	57:12,20
94:4 95:2	citations 76:6	47:10,20	clear 36:17,19	58:9 71:9
96:3 97:13	cite 82:2 108:7	51:8,11 52:3	37:3 72:1	72:13 74:7
100:11 101:2	116:12 117:4	53:13,18,21	74:1 150:8	77:16,20
102:13 103:4	119:9 142:11	53:22 54:10	185:21	78:20 79:3
103:21 105:3	144:7 145:19	54:21,22	client 170:3	79:13 80:3,5
105:15	145:21	55:6,15	clinical 41:5,8	80:18,22
106:10	163:16	56:12,19	74:5 128:14	81:6,10
107:16	171:20	58:15,16,19	128:21	82:14,20
108:13 109:5	cited 76:10,13	58:20 61:5	Clip 7:2	83:3 97:17
110:1 111:13	80:10 119:11	61:11 62:5	co-leader	98:10 100:14
111:19 112:2	156:15	63:5 66:14	11:10	102:6 104:13
113:21	178:13	68:11 71:14	coextensive	105:1,12,20
115:13 117:2	181:19 187:3	71:15 73:18	96:22 97:2	106:8 109:13
118:5,16	citing 181:17	73:19 74:19	collaborated	109:21 115:5
119:5 124:1	Civanti 125:22	74:20 85:1	45:20	123:9 127:16
125:12	claim 41:1	86:7 95:9	Combigan	134:7,21
126:19 133:2	60:10,12,18	96:21 97:7,8	32:22 33:1	135:2 136:8
133:6 134:15	60:19 61:6	97:19 98:6,7	35:3,11,19	140:7,9
141:3 144:17	61:15,16	98:14,15	160:19	141:2 177:5
148:21	64:11,13	99:10,18	come 19:18	commercially
150:13	67:8,13 68:4	100:4,7,8,19	37:11 73:13	78:7,11
157:15	68:5,15,16	114:19	83:22 85:7	common
158:19	68:20 69:3	123:11 125:1	110:12 117:6	134:20
159:20	69:17,19	125:2 129:3	118:9 138:12	Commonwe...
168:11 170:5	70:8,20,20	129:4 141:17	149:21 179:3	2:5 188:5
170:22	70:21,22	141:18	comfortable	companies
172:15	71:2,2,4,5	142:13,22	126:8	36:7 37:20
173:16 179:8	75:15 168:9	145:10,16	coming 38:12	38:3 124:17
184:18	claim-by-cla...	147:19 150:1	118:10	127:5 151:10
187:18	185:12,15	150:2,9,11	119:10 130:5	151:18
Circana 135:9	186:1,3	156:2 159:12	commenced	152:18 178:2
Circuit 87:18	claimed 41:12	159:13	173:20	company 24:9
88:6	82:9 83:12	173:14	commencing	38:2 124:12
circumstanc...	147:22	182:13	2:5	138:10
86:21 110:12	148:11,14	185:12,17,19	comments	151:16
127:11 128:2	149:15	185:20	64:7	177:20
128:19 137:2	159:18	186:11,12	commercial	compare
137:10,17	claiming 51:13	clarification	24:17 25:22	110:10
141:7,12	claims 39:11	79:17	26:8 52:17	117:17 120:2
152:17	39:14 40:14	clarify 133:3	52:22 53:7	compared
citation 110:18	40:18,20	clause 148:8	53:16 54:4,6	70:19,21
112:1 116:3	41:1,2,4,9,10	clean 12:19	55:4,6 56:2	94:11 104:15

129:17 140:1 142:21 comparison 58:14 118:2 comparisons 135:8,9 competing 104:12,16 135:10 competitive 141:13 competitors 35:15 129:17 140:21 compiling 51:5 complete 11:1 20:15 43:2 99:5,6,16 100:17 169:19 component 154:2 components 67:20 79:14 99:12 149:3 186:8 composition 67:16 compound 33:22 54:17 93:19 compounds 34:1 comprising 62:14 concentration 23:2 35:18 64:1,2,14 65:11 69:8 concentratio... 58:2 63:2,13 63:19 64:4,9 64:22 65:5,7	65:17,22 66:6 143:4 concept 46:7 78:2 81:18 123:1 148:15 154:21 concepts 77:15 conclude 104:13 concluded 105:1 147:16 concluding 187:21 conclusion 52:20 56:7 56:22 57:16 61:8 68:8 73:14 77:19 79:22 82:19 83:16 95:8 103:22 105:16 106:11 107:6 107:17 108:14 109:6 110:3 118:6 119:7 138:11 138:13 144:18 conclusions 5:15 101:9 102:6 108:5 119:10 condition 69:7 confidential 25:18 26:5 confines 130:2 confirm 9:3 confusion 169:20 conjunction 17:3,20 18:21 29:1	29:11 54:7 167:17 169:5 171:4 181:8 connected 188:14 consider 23:15 24:11 24:18 25:1 34:3 35:3,8 41:3,7 57:11 57:19 69:13 97:21 98:21 99:4,16 128:3,20 135:4 185:10 consideration 80:6 107:13 consideratio... 79:11 104:4 109:20 114:20 182:14 considered 55:8 56:2 103:19 106:7 110:5 134:7 144:2 167:20 169:18 179:2 consistent 29:5,8 115:1 185:5 consisting 67:17 68:20 69:5,15,16 70:9,9 consolidated 132:20 constitute 64:22 constitutes 65:11 construct 77:22 79:4 construction	41:1 69:20 consumer 154:17 consumers 122:19 cont'd 4:22 5:1 5:22 6:1 contact 29:9 contain 34:10 35:9 contained 34:14 35:2 containing 33:16 context 15:5 113:3 151:15 165:6 continue 122:2 continues 176:4 continuing 22:5 control 28:20 copies 13:2 copy 4:9 12:19 43:1 50:16 75:4 142:5 Corp 5:19,20 111:10,12 116:12,13,21 correct 9:21 13:20,21 15:15 21:17 21:18,20 22:11,12 23:3,4,7,10 23:21,22 24:2,3,6,7,21 24:22 25:9 25:10,15 27:9,10 28:9 28:10 32:17 32:18,20	33:12,13 38:16,19,20 38:22 39:1 41:16 44:8 44:14 49:10 49:11 51:15 52:5 53:10 53:18 54:15 55:9 59:14 61:17 66:2 70:11 73:5 74:9 76:12 76:18 80:11 80:12 84:10 84:11 85:4 87:4,5,8,11 87:12,14,15 90:7,11,16 90:19 91:14 92:6,14 94:3 100:2,10 101:18 102:9 102:10,12 103:3,20 105:2,14 106:9 107:15 108:12,21 109:22 115:3 116:9,20 118:4,15 119:4 123:4 126:18 127:17 131:8 131:9 133:4 133:5,17 134:8 136:20 144:10 145:3 145:17,18 146:12 147:2 147:3,6 153:3,4,9,14 154:13 156:6 156:16 166:16
---	--	---	--	---

171:22 172:1 172:6 173:10 174:11 176:9 177:15 180:3 180:5,20 183:12 188:9 correctly 86:2 133:15 correlation 82:7 cost 122:19 counsel 7:17 9:17 29:9 31:17,22 41:16 81:18 91:4 92:19 112:19 168:6 186:18,20 188:12,13 counter 56:10 couple 9:16 28:7 48:7 51:6 167:7 180:7 coupled 145:7 146:17 147:11 150:4 155:19 course 19:3 80:14 116:22 153:8 178:1 187:6 court 7:13 32:11 37:18 79:17 87:6 87:17,19 101:13 131:17,20 168:1 169:22 courtroom 9:20 cover 39:6,12 39:14 42:20 92:22	covered 173:14 covering 110:9 117:16 covers 173:22 CPA 22:20 CPE 21:22 22:4 create 129:2 credit 65:21 credited 106:5 critical 85:3,5 critique 97:16 critiques 185:7 cross-exami... 10:2 current 21:11 22:18 34:15 118:3 currently 27:1 27:6,16 52:14 105:21 curriculum 4:18 20:8 customers 152:16 155:8 155:9 CV 20:14 21:11,14 32:2 36:16 37:3 87:3 130:16 133:12 cyclophosp... 25:22 cyclosporin 131:4,18 D D 4:1 D-I-M-I-T-R-I 45:12 damages	168:18 170:10 data 129:5 130:7,9,10 130:15 135:9 181:22 184:13 date 7:10 25:8 dated 13:19 113:18 188:20 day 5:13 87:17 89:17 90:1 186:22 deal 126:22 dealing 24:15 94:12 126:3 126:4 127:12 139:8 140:11 141:13 154:8 185:17 186:9 dealt 94:10 185:22 debuting 172:13 175:1 decade 80:19 81:5 decades 141:10 December 101:12 decent 162:9 decided 179:14 181:6 decision 27:18 27:20 52:12 57:18 110:18 177:20 179:18 decisions 152:6 179:20 declaration 4:11,15 5:3,5 5:9 6:8,10	12:9,21,21 12:22 16:5,9 16:11,21 17:2,5,5,11 17:15 18:9 18:13,14,17 19:3,7,11,13 20:12 35:6 42:15 43:3 43:18,22 44:1,10,13 44:15,16,18 44:20 46:1 49:16,19 59:22 61:19 62:10,20 65:2,18 68:9 72:20 74:11 74:14 75:5 75:11,12 77:7 78:16 80:11 81:1 82:4 84:20 85:17,19 86:5 95:3 97:20 99:20 100:6,16 108:8 109:15 114:3 115:3 115:4,12,18 116:4,8,12 117:9 124:18 131:19 135:16 142:4 142:7,12 143:12 145:4 145:21 146:14,15,21 147:19 149:3 153:6,7,16 153:18 156:13,15,19 159:21 160:11 163:8	166:10 172:11 174:7 174:22 175:5 176:2,13 180:14,19,22 181:9,12,13 182:20 183:7 184:2,10,12 185:1,8 187:4 declarations 14:20 17:7 30:5 31:2,8 41:13,20 51:5 53:4 61:20,22 70:13 72:21 75:18 76:12 76:18 79:16 109:1 115:9 119:12 131:14 181:1 181:13 183:10 187:13 declining 174:15,17 dedicated 153:13,14 dedicates 151:4 defense 33:9 defenses 51:20 define 38:2 119:20 120:20 135:11 151:14,17 defined 121:10 definitely 132:11 182:6 definition 65:10 135:19
---	--	---	---	---

163:9	describes	117:13,14,15	156:5	88:19 90:6
definitions	135:7	126:4 137:10	discussing	90:14,22
78:19	describing	137:20	73:16 83:5	92:18 100:21
definitively	167:12	139:22 140:2	123:17	101:3,8,8,12
77:13 86:18	Despite 71:7	157:5 160:22	133:11 142:8	101:21 102:3
degree 23:1,6	detail 84:19	161:3 182:1	166:14 169:6	116:17 117:5
Delaware 26:4	153:22	differently	176:21	130:20
26:16 101:14	detailing	124:4 140:3	180:16	138:16
demand	128:12 137:6	140:4 151:17	discussion	182:18
179:11	153:1 154:5	difficult 37:10	85:16	183:15 184:1
demonstrate	154:9,10	140:22 141:1	dispute 48:10	documentati...
123:10	155:3 175:22	dig 121:20	130:13	169:2
demonstrates	176:16 177:2	Dimitri 45:12	disputed	documents
143:1,15	details 27:18	45:15	130:9	12:14,17
denote 6:16	73:9	direct 35:14	disputing	18:4 28:22
depending	determine	39:13 66:6	130:7	45:13,21
56:7 128:1	56:9 61:2	90:6 129:18	distinguish	169:7 187:3
depends 36:8	determined	135:16	77:3 83:3	187:8
38:1 156:9	48:17 53:19	direct-to-co...	distortion	doing 66:7
depo 132:6,10	54:9 55:13	153:1	79:15	81:4 124:20
deposed 8:19	57:22 58:17	directly 18:3	district 25:15	138:10
9:4,13	122:1 163:19	30:21 150:16	26:4,16	151:22 155:5
deposition	developed	director 11:9	32:11,11	187:12
1:16 2:1 6:7	175:8	15:7 17:1	37:18 87:6	dollar 78:10,13
7:3,12,20	developing	28:20 49:21	101:13,14	165:4,10,11
14:20 15:20	29:10	50:4	131:17,20	166:3
51:2,4 67:3	devices	disagree 19:13	168:1,7	dollars 136:10
75:7 111:21	118:15	54:18 134:13	169:22	138:12
113:20	162:10	146:21 148:2	doctor 23:20	170:14
132:22	DI193 100:22	148:4	158:2	dose 159:4
154:11	differ 29:6	disagreeing	document	double-check
167:12,21	difference	148:5,17	6:17 12:20	33:8 156:17
168:3 172:8	15:11 42:3	disagrees	14:2,15	download
172:10	69:14 70:8	55:22	15:20 16:7	12:14 20:13
186:15,17	differences	discounts	18:1 19:21	20:17 113:7
187:5,10,21	45:22 46:6	121:3,11	21:9 25:5	113:11
188:6	71:7 76:5	138:20 139:5	32:4 39:17	downloaded
depositions	77:7 182:7	139:13,22	40:3,11,13	20:17
132:2	different 34:2	165:22	40:13 42:9	doxycycline
describe 81:19	35:10 55:20	discuss 41:14	42:14 43:6	26:20
158:13	61:6 94:8	112:9,18	43:11 44:6	dozen 115:11
described	96:11 106:20	discussed	45:4,17	Dr 1:5,6 6:4,5
176:19	107:4 110:7	66:8 74:13	46:10 48:20	7:4,5 8:6
178:12	110:7,8	87:3 117:21	49:12 50:10	30:4,4,8,10

30:15,17	167:10	drops 166:22	easier 13:4	17:2,21
31:2,4,8,10	driven 58:2,18	169:11	easily 157:21	28:14,21
31:12,13,16	64:8 81:11	171:15	economics	33:11,15
31:17,20,21	84:22 85:12	172:14 174:9	24:16 34:4,5	36:18 45:20
41:18,18	141:20	174:14	34:9	49:21 133:16
47:6,12,19	148:13	176:17	ecosystem	133:20 187:7
47:21 48:4	driver 83:6	drove 91:6	168:8	engagements
51:13 62:2,3	91:13,21	92:6,14	education	9:10 15:7
62:13,13	120:5,5,10	177:7	22:6	28:8,18,19
63:4,10,10	122:11,13	Drs 62:22	educational	29:6 37:5
63:18 64:4	123:14 127:2	drug 25:1,20	23:5	131:8 132:5
64:10 65:6,6	128:3 137:7	32:19 37:20	effect 149:16	133:12
65:16,21	139:13,16	38:2 127:20	150:12	entered 5:17
66:11 69:22	147:1,5,10	127:21	effective 143:4	6:3 111:8
70:1 71:19	147:20 148:7	128:14,15	159:5	enters 127:4
71:20 72:2,9	148:18	136:19 138:3	efficacy 63:1,7	entire 149:2
72:15,22	163:22	177:22	64:7,8 66:9	entirely 82:15
73:9 74:15	drivers 57:5	DTC 155:6	72:10,12,16	entireties 18:5
74:15 143:18	62:6 70:3	due 155:17	73:1,14 74:5	entirety 40:8
143:20 144:5	71:16 75:21	duly 8:9 188:8	146:1 155:17	entities 151:11
144:13,14	97:22 98:16	DUNNER 3:11	efforts 57:8	151:15 152:5
145:2,5,12	98:17 109:11	3:16	58:5 85:17	entitled 42:15
156:6,11,12	122:10 123:4	Duquesne	85:21 91:5	184:2
156:14	129:16	8:17 23:3	91:12 92:6	entity 179:5
157:14 167:3	149:10,19,22	dynamic 140:2	92:14 119:19	equal 118:1
168:6,18	150:8,21		121:22	equivalent
169:21 178:8	186:5	E	122:16	184:9
178:14,17	drives 74:17	E 3:1,1 4:1,7	124:18,22	ESQUIRE 3:5
179:4,11,13	84:1 85:8	188:1	139:15	3:16
179:18,21	123:17	e-mail 4:14	141:20 145:8	essentially
180:2	124:20	earlier 87:3	146:18	69:5,16
drafter 17:6	146:16 149:7	97:5 106:17	175:22	70:10 114:17
drafting 17:2	154:20	122:12 151:9	eight 93:18	181:18
28:22 49:18	driving 122:7	160:9,19	Eighth 3:6	182:11
131:13	122:21	161:12	either 30:21	EST 2:6
drafts 31:1,7	124:16 128:9	165:21	119:12	establish
drive 66:19	149:5 155:22	176:19 182:9	electronically	114:19
76:4 85:22	157:6 160:2	185:4	4:9	182:12
122:1,2	165:13 166:8	earn 152:19	embodiment	established
125:6 145:8	167:2 169:11	earning 152:6	185:20	79:4
154:22	drop 62:14,17	earnings	embody 41:12	events 158:5
157:13 158:7	67:17,22	163:17	employee	evidence
163:15	72:4 94:12	ease 75:5 77:4	188:13	55:16 76:11
166:21	173:10	121:1	engagement	76:13,14

96:10 104:13	42:9,10,11	21:12 25:8	98:15 109:10	127:11 128:1
107:7 147:9	43:11,12,14	33:14 81:4	eye 1:9 3:9	128:18 137:2
147:15	44:2,19	81:20 87:22	5:11 6:5 7:6	137:9,11,17
163:13,18	46:11,12,14	88:11 158:17	8:1 47:15	137:20 141:7
165:12	48:20,21	experienced	48:9,16 49:8	141:11
170:20	49:1,6 50:11	148:1 149:17	67:14,15	152:17 179:1
172:18	50:11,12,15	expert 4:11,15	94:12 143:4	Factually
175:16 177:3	50:15 59:9	5:5,9 16:5	153:2,20	115:15
181:17,19	59:10,20	24:12,18	155:4 160:18	failed 97:21
evident 122:14	60:1 67:2,2	29:2,11 30:1	166:15,20,22	98:21 99:15
exact 6:16	75:7 76:20	30:7,14,21	167:6 169:10	99:22 108:19
exactly 27:19	76:22 88:19	33:3,16,22	169:11	169:13
51:20 129:21	89:2,5,7,8,12	34:4,8 40:19	170:15	failing 93:17
184:21	100:21 101:5	41:4,8 42:15	171:15	fails 85:19
examined 8:9	111:3,5,14	43:18 49:15	172:14 173:6	86:5 114:18
example	111:21 113:3	49:22 50:8	173:10 174:9	115:22
142:15,20	113:12,15	131:11		182:12
143:14	114:7 119:15	144:12	F	failure 94:1,14
165:17	130:17	168:18	F 188:1	94:22 96:1
examples	132:14,15,16	170:10	facets 83:21	106:6
160:15	132:19,19	experts 41:9	fact 5:15 16:10	fair 9:15 10:9
excerpt 89:16	133:3 142:1	69:21	55:3 56:1	10:14,20
excluding	142:3 171:21	explain 28:17	101:9 102:5	23:13 36:3
174:9	180:9,11	108:15 124:3	105:8 108:8	39:7,10 58:7
exclusion	183:2,3,4	137:22 175:2	136:5,10	75:16 87:21
147:21	exhibits 4:8,22	explained	138:20	88:11 98:8
148:10	5:1,22 6:1,14	65:18	143:14	107:10
excuse 28:13	12:12 74:22	explicitly	174:22	115:12 122:8
120:3	76:11,17	185:16	fact's 104:3	122:22
exhibit 4:11,14	117:7 171:3	Explorer 3:12	factor 55:7	126:12 152:8
4:15,18,19	177:14 180:8	extensive	103:18 105:1	154:1
5:3,5,8,9,12	exist 140:1	87:22	105:22 122:6	fairly 29:8
5:13,15,17	existence	extent 56:22	127:21	familiar 162:18
6:3,7,8,10	139:1,4	57:15 61:19	128:15	170:8
11:13,14,15	140:21	62:20 70:13	factored	far 144:21
11:21 12:2	exists 127:8	72:7 73:7	105:13 106:2	FARABOW
14:1,2,4,8	Exp 188:18	74:11 75:18	factors 79:13	3:11,15
15:19,21,22	expect 27:4	95:3 111:20	85:3 97:19	fault 170:2
16:3,11,21	expenditure	112:4 113:22	98:15 105:9	faulty 99:22
17:10 18:10	174:10	115:14	106:16	favor 27:17,20
19:21,22	expenditures	157:16	109:10 126:6	103:16
20:1,11 21:8	136:19 138:3	159:21 170:6	facts 86:21	109:22
23:10 39:18	Expense 184:3	171:1	110:6,12	favors 105:2
39:18,20,21	experience	extrinsic 97:19	117:13	feature 107:5

features 41:5 41:8,11 53:17 55:5 56:18 58:10 61:14 62:4 63:6,9 66:8 66:12,15 71:18 72:19 73:15 74:6 74:13 83:11 85:12 103:1 106:22 128:14,21 129:1 145:15 146:2 150:11 159:18 160:3 February 6:3 16:4,20 43:17 113:18 Federal 87:18 88:6 feel 13:3 20:13 152:2 Ferris 130:3 153:7,11 167:11 172:22 176:15 Ferris' 172:5 176:1,12 fields 24:14 fifth 32:7 figures 54:3 file 11:17,19 11:20 14:2 15:20 19:21 21:8 39:19 43:12 46:11 48:21 50:10 88:20 89:9 100:22 111:3 113:4 130:17 132:14 177:20 180:9	filed 47:6,19 101:11 182:8 filing 47:12 final 52:13 finally 86:4 financial 151:4 177:7 180:2 financially 122:20 188:14 find 55:3 56:17 57:11 finding 81:9 105:11 157:3 findings 5:15 101:9 102:5 108:7 finds 56:1 fine 49:4 164:11 finish 164:7,12 Finnegan 3:11 3:15 7:22 8:3 firm 38:9 firms 21:22 38:13,14 first 11:13 16:15 25:6 26:21 115:20 120:20 136:1 139:8 180:8 fitness 157:22 five 14:15 flip 171:11 focus 126:11 126:13 146:6 159:14 162:6 focused 115:4 126:3 141:16 145:22 focuses 156:18 focusing 139:15	Fof 100:22 folder 11:16 20:5 48:21 88:20 90:13 113:5,10 132:14 180:9 180:10 followed 104:17 followers 157:3 following 143:13 follows 8:10 footnote 16:17 footnotes 119:11 force 118:2 153:12,14,21 176:18 forecasted 174:8 179:7 forecasting 171:13 foregoing 188:8 form 67:16 154:19 format 4:9 forming 17:3 78:21 80:14 116:22 117:5 118:20 129:6 153:8 167:15 172:3 180:19 forms 119:3 152:21 formularies 126:5 formulation 127:20 formulations 40:21 41:6 formulator	25:2 Fort 8:17 forth 14:19 26:11 42:2 63:7 64:6 66:16,19 70:6 71:22 72:16,22 77:22 78:4 79:12 80:4 98:11,12 103:12 109:14 121:22 122:16 123:16 124:18 135:7 135:17 150:5 156:13 169:6 173:21 176:20 forward 77:3 found 52:3 57:2 61:17 62:17 72:5 109:21 foundation 112:5 118:17 119:6 134:16 168:12 170:6 172:16 franchise 168:21 Frank 2:3 7:13 188:3,18 free 13:3 20:13 155:7,11 156:20 157:4 173:1,5,13 175:1,9,17 frequently 19:19 24:15 Fresenius 5:13,16 26:3	101:10 Friday 1:17 2:6 186:21 front 12:18 43:1 75:4 88:7 108:2 184:21 full 43:2 57:21 91:18,22 147:14 148:9 148:15,16 170:9,18 fully 137:12 143:17 fulsome 108:4 further 12:15 188:11 G GA 3:18 gaining 178:17 Galanis 30:4,8 30:10 31:13 31:16,17 41:18 62:2 62:13,22 63:4,10,18 64:4,10 65:6 65:16 66:11 69:22 71:19 72:2,9,15,22 73:9 74:15 142:12 143:12,20 144:13 145:2 145:5,20 146:8,14 156:6,12 Galanis' 31:2 65:21 143:18 144:5,14 145:12 156:11 Galderma
---	--	---	---	---

26:14,15 27:22 gap 139:18 GARRETT 3:11,16 general 77:14 128:17 134:19 135:17 136:21 165:19 generally 40:10 91:6 134:10 140:22 151:3 152:18 generated 169:1 generic 36:6 36:19 37:7,9 37:19 38:2,4 47:21 125:18 127:4 178:1 178:8 generics 125:19 getting 95:7 95:16 140:19 158:14 Gil 142:16 143:15,22 144:4,6,9 145:13,20 146:6 give 11:1 155:9 157:22 158:5 given 9:5,12 41:15 77:2 136:19 138:3 gives 135:18 giving 9:19 104:18 155:7 157:3	Gleason 9:11 11:6,8 33:3 38:12 45:11 161:15 162:11,16,22 go 11:12,19 12:16 13:7 13:22 14:14 17:12 25:4 25:11 27:4 32:3 33:7 43:5 44:17 44:19 60:6,7 60:11 67:7 86:18 90:5 90:21 91:18 92:17 93:5 93:10 102:2 111:1 114:6 114:15 126:7 129:22 130:19 133:22 135:21 136:5 138:15,16 142:3,19 144:21 146:20 154:18,22 155:15 171:7 171:11,12 175:18 183:14,21,22 goal 151:22 152:6 goes 107:4 147:13 183:19 going 11:13,19 19:6 77:2,3,6 77:6,13 85:20 90:22 93:8 117:12 168:20,22	good 8:12,13 59:19 60:10 107:21 154:17 158:12 159:8 Goodwin 3:5 8:5 38:8 gotten 13:9 166:7 Graham 79:13 granting 137:19 great 32:6 greater 136:11 gross 121:3,11 165:21 184:4 185:4 ground 9:16 group 33:10 163:5 grown 177:9 guess 36:15 161:20 169:20 174:5 H H 4:7 H-E-R-O-N 89:10 half 19:9 halfway 104:11 hand 34:15 38:10 handful 38:11 161:14,21 178:19 happening 138:9 154:5 165:8 166:5 176:17 hard 4:9 43:1 142:5 head 119:21	heading 28:12 hear 168:17 hearing 167:14,22 173:4 hearsay 89:3 101:4 111:15 133:8 held 7:12 22:7 help 155:13,21 157:10,13 helped 132:11 133:21 166:21 helping 167:8 169:14 Henderson 3:11,15 7:14 7:16 Heron 5:13,15 26:2,10 27:8 27:17,20 87:4 88:20 89:9 92:4 94:17 95:10 96:13,17 100:22 101:10,16 102:8 103:1 103:12,16 104:17 105:2 106:18 107:11 108:12 109:22,22 Heron's 91:5,7 91:12 92:5 high 23:6 167:5 higher 87:18 historical 177:6 hit 187:11 Hofmann 4:16	5:6,9 6:7 14:12,17 15:5,8,13 16:5,10,13 17:3 18:12 18:16 19:2 19:14 30:20 31:4,5,10,12 31:15,20 33:2,4 42:5 43:18,22 49:16,22 114:3 131:10 131:14 132:22 134:6 134:9,18 136:9,18 138:19,22 139:4,10 Hofmann's 14:19 16:20 19:1 44:12 116:3 132:1 133:19 134:14 Honor 88:8 hospital 125:21 126:3 hour 10:6 58:22 164:5 186:22 housekeeping 180:7 human 67:15 151:5 hyperemia 68:1 72:17 73:2 hypothetical 55:11 56:5 56:10 66:4 106:12 141:4 144:19 156:10
--	---	--	--	--

158:20	176:3	34:2 35:10	10:18	IPR 7:7,8,9 9:9
I	impacted 91:7	indicia 53:9,12	intellectual	9:13 11:15
I.D 4:10 5:2 6:2	importance	83:13 140:7	11:10 28:12	12:10 14:7
ID 188:18	84:13	individual 9:11	inter 9:5 47:6	16:4 20:11
idea 153:20	important	45:10 84:19	47:13	29:13 34:17
154:3 159:9	128:20	industry 34:3	interaction	42:17 43:3
identical 16:10	163:16	81:7 151:3	107:22	47:7 48:14
16:18 43:22	inaudible	152:13	interested	49:7 50:2,16
58:14 60:19	89:21	information	188:15	57:12 110:18
60:21 61:2,4	include 107:3	16:18 24:15	interpretation	113:16
68:5,17 71:3	185:2	25:18 26:5	40:20	114:18
71:6,10	included 17:4	29:21 40:12	interpreting	116:13,22
75:12,20	18:12,13	41:15,19	40:22 41:4	131:19
76:8,14,16	41:20 109:1	62:4 63:18	introduce 7:17	132:20
182:5	130:14	65:6,7 73:11	11:13,14	133:11
identification	169:17 174:3	74:16 85:7	14:1 19:20	180:15
12:3 14:5	includes	128:3 129:16	39:17 42:9	182:12 183:8
16:1 20:2	142:14	130:14	48:20 88:19	184:15
39:22 42:12	including	139:10,17,18	113:4 180:7	IPR2019-1313
43:15 46:15	67:20	144:13 145:6	183:2	5:18 111:4
49:2 50:13	inclusive	146:14	introduction	111:10
89:13 101:6	115:7	153:22 154:3	89:1	IPR2022-001...
111:6 113:13	incomplete	169:8 176:15	invalid 48:18	5:10 6:9
132:17	55:11 56:5	185:7 186:16	51:14 52:4	IPR2024-004...
180:12 183:5	66:4 85:18	informative	57:3	1:14 4:13,17
identified	93:16 98:19	154:3	invention	6:4,10
99:11 123:4	99:3 106:12	Ingenus 25:13	81:12 82:9	IPR2024-005...
123:13	141:4 144:18	26:21	82:16 83:12	1:11 5:4,7
identify 123:19	158:20	ingredient	148:11,15	IPRs 9:11
152:20	incorrect	33:17 34:20	inventions	29:18 34:16
identifying	144:15,16,22	62:16 67:19	147:22	77:1 170:21
97:18 98:14	145:3,14	68:22 72:4	149:15	issuance
Illinois 25:15	increase	initial 18:11	inventor 39:2	114:3
illumination	171:13 174:8	injunction	invest 179:6	issue 23:17
167:6 170:15	174:17 175:2	26:19 28:3,6	investors	52:16 95:17
173:7	175:15	167:14,18	151:19	110:8,9
illuminations	independent	170:20	involved 18:8	117:15,16
166:15,20	66:1 98:4	inquiry 82:22	29:18 36:4	118:22
169:10	143:16	134:22 135:3	48:9 105:10	137:12,15
171:16 174:9	independently	inserted 50:7	involves 12:5	issued 18:14
impact 93:13	144:9	instance 137:3	involving	61:21 62:1
140:3 146:7	indicate 54:4	instituted	42:17 49:9	181:14
146:9 154:15	indicated 27:9	47:11	IP 9:11 11:6	issues 14:18
	indications	instructed	45:11	24:16

IV 84:5	79:15 94:14	92:1 96:13	1:5,6 6:4,5	learn 168:5
Ivan 4:15 5:5,9	99:3,7,21	97:4 105:18	7:5,6 32:10	learned 19:6
6:7 14:12	100:16 115:6	105:20,22	lack 54:4	leave 51:18
16:5 43:18	148:6 174:13	106:1,14	72:17 73:2	63:3 73:11
49:16,21	Jersey 32:12	107:19,20,22	114:8 115:17	led 28:14,18
132:22	job 11:7 87:17	112:5 117:20	136:7,20	33:11 131:8
Ivan's 16:15	John 6:8,10	119:17,21	141:16	132:6 133:13
	153:7 180:14	120:1 121:17	laid 149:1	133:20
J	joint 33:9	129:9,13	landscape	left 66:22 67:5
January 5:17	judge 87:14,16	142:9 144:20	141:14	68:19 134:2
111:9	87:21 88:6	145:2 146:7	language	136:2 138:17
Jaros 6:8,10	88:11,16	152:15	69:18 75:15	left-hand
42:2 46:8	101:11 102:4	156:18	lapsed 22:21	59:18
63:6 64:6	102:11,21	157:20	large 104:19	legal 7:14,16
66:8,16	103:8 104:22	162:19,19	Laskar 30:4,15	41:14 51:19
72:19 74:13	105:10,19	164:5 166:12	30:17 31:20	52:20 56:7
76:7 78:4	106:2,5,14	168:13	31:21 41:18	56:22 57:16
85:17,18	107:3,20,22	178:12,19,20	62:3,13,22	61:8 68:8
86:5 94:2	108:3 109:20	179:10 181:4	63:4,10 65:6	77:19 79:3
97:16 98:11	110:5 163:2	182:4 184:21	70:1 71:20	79:22 80:2
98:21 99:10	168:7	187:10	74:15 145:21	82:19 83:16
99:15 100:7	judge's 104:2	known 57:6	146:15	88:17 103:22
108:19 109:3	July 6:7 133:1	58:3 62:7	156:14	104:7 105:16
109:12 115:8	jump 136:3	63:1 64:5	157:14	106:11
123:8 128:21	June 27:7 87:9	66:12 70:4	Laskar's 31:8	107:17
130:2 135:6	90:2	71:18 72:10	launch 168:20	108:10,14,16
135:16	jury's 104:3	72:13 73:16	launched	109:2,6,8,17
146:22,22		74:16 76:1	120:16	110:2 112:3
147:18	K	85:13 99:13	121:14	118:6 119:4
149:19 154:6	Kabi 5:14,16	129:1 141:21	law 5:15 21:22	119:6 144:18
154:10 167:4	26:3 101:11	143:2,15,21	38:8,14,18	LEI 168:9,21
169:13 170:3	keep 66:22	145:16	77:21 79:5,8	169:7
170:16	93:8	146:15 150:3	80:4,10,13	let's 9:15
173:18	kind 37:11	150:20	80:16 87:22	11:12 13:8
175:13	127:11 128:6	155:18,20	88:5,12	13:12 25:11
176:20	140:15	156:6,9	101:10 102:6	32:2 74:21
180:15 181:1	know 19:5	157:9 159:4	110:22	84:4 92:17
181:17	27:5,16	160:3	lawyer 88:15	111:1 120:22
182:20 183:8	30:20 31:4		Icipriano@g...	126:11,12
184:10 185:1	31:10 33:8	L	3:8	136:5 146:20
185:16	34:11 45:13	label 35:11	lead 15:6	165:20
Jaros ' 12:22	57:17 73:11	labeled 115:17	16:22 49:20	level 87:19
53:2 54:13	78:17 80:17	167:7 169:16	156:21	125:10
54:19 71:13	91:19,20	Laboratories	leading 33:15	126:16

128:11	49:8,9	151:17	155:21 157:9	145:9 146:17
140:17 160:5	101:11	157:19 163:4	171:14	146:19 147:1
160:20 167:5	LLP 3:5,11,16	166:11 172:9	Lumify 34:21	147:5,11,20
levels 156:19	7:22	172:20	35:2,4 39:6	148:12 149:6
license 177:21	lodge 89:1	177:14,16	39:12,15	149:11,17
178:12	111:14 133:7	182:17	47:22 48:5	150:6,19
179:15,19	Lomb 3:10 8:2	183:21	53:8,12,17	152:22
180:3	57:8 58:5	looked 35:11	53:21 54:4	153:14 155:8
light 134:8	66:18 70:5	95:14 101:17	54:20 55:5	155:9,12,14
135:5	71:21 76:2	118:10	55:14 56:18	156:22 157:4
line 91:3 92:18	120:13,15	130:17 182:9	57:5,8 58:1,5	157:6,13
93:6,11	121:12,21	183:17	58:10,12,18	158:2,3,5
134:5 136:2	122:15	looking 21:9	62:7 63:1	159:17 160:1
136:4 138:18	123:16 153:8	34:13 44:11	64:8 66:8,20	160:13 161:2
140:5	159:17	64:11 81:8	70:3,3,6	164:1 166:9
lines 14:15	166:19	92:18 94:9	71:17,22	166:15,20,22
linked 173:8	171:21	104:10 122:9	72:10,12	167:8,9
Linnea 3:5 8:4	174:11	122:20 128:4	73:4,16 74:7	169:1,10,11
list 9:2 21:11	Lomb's 34:21	134:5 138:17	74:18 75:22	169:14,16
28:11 36:12	47:22 92:13	163:12	76:2,5 84:22	171:14
listed 18:1	120:6,18	166:10	85:9,11,22	172:14 173:1
23:9 26:11	121:16	looks 11:16	86:1,6,9,22	173:4,13
26:22 28:1,8	long 155:3	90:10	92:14 94:3,7	174:2,9,14
45:4 61:4	186:19	losing 152:15	94:15 95:7	175:1,15,16
68:14 84:16	longer 153:13	lost 13:9	96:14,16	175:22 176:5
84:20 86:8	153:13	lot 38:14 40:11	98:1,5,18	176:17,22
92:21 94:15	176:16	115:7 126:2	99:14 100:1	177:2,9,11
100:5 117:8	look 9:2 13:12	126:6 127:3	100:6 106:19	178:9,15
118:8 135:19	21:9 32:2	127:8 128:12	108:8,21	184:3 185:20
171:3 177:22	35:13 36:12	141:9 155:1	109:12	186:6
lists 103:8	46:11 86:19	155:5 160:12	119:18	Lumify's
litigation 36:5	90:13 91:2	160:13,22	120:11,15	115:22 120:5
37:18	91:18,21	161:3 163:16	121:13 122:1	147:2,6
litigations	109:10	168:22	122:2,8,11	148:19
37:8	110:21	lots 38:4 96:12	122:14 123:3	185:11
little 37:10	123:12	128:2 152:17	123:15,18	Lumify,' 148:1
86:13 93:15	124:15	low 63:2,12,14	124:15,16,22	lunch 164:6,13
100:3 119:20	127:10	63:18 64:2,4	125:7 128:4	Lupin 26:16
124:4 135:22	129:20	64:9,22 65:4	128:22 129:7	27:22
158:13	130:16 136:1	65:7,11,17	129:16 135:4	
live 87:10	138:7,11	65:22 66:6	135:8 137:4	M
LLC 1:9 3:9	140:18	143:3 159:4	137:5 139:14	M 1:16 2:1
5:16 6:6 7:7	141:11 142:6	low-dose 57:6	139:19	3:16 4:4,12
32:8 47:15	149:18 151:2	58:2 155:18	141:16,19	5:3 8:8 42:15

main 29:9 149:3 maintain 152:16 major 120:4,5 majority 36:4 45:19 77:12 161:15 177:1 making 152:5 174:15 176:16 maleate 32:16 manage 37:8 management 179:12 manager 45:11 managing 11:9 15:6 16:22 28:20 28:21 49:20 50:4 manner 6:14 34:12 36:9 46:4 104:5 March 4:14 13:19 18:14 marked 4:10 5:2 6:2 12:2 14:4 15:22 20:1 39:21 42:11 43:14 46:14 49:1 50:12 89:12 101:5 111:5 113:12 132:16 180:11 183:4 market 83:22 104:19 124:18 134:8 135:5,12,15 135:17,20 140:3,6,13	140:15,17,19 165:7 166:5 177:11 marketed 136:6 169:16 marketing 24:13,18,20 57:7 58:4 62:8 66:18 70:5 71:21 76:1 85:17 85:21 91:5,7 91:12 92:5 92:13 99:14 105:9 106:6 107:1,13 119:18 120:7 120:10,12,18 121:16,22 122:3,12 123:16,22 124:11 125:4 125:10,16 126:2,17 127:2,16 128:5,6 136:10,18,21 137:5 138:2 138:6,8 139:15 141:20 145:8 146:18 147:1 147:5,9,19 148:6 149:6 150:5,20 151:5 152:22 154:20 157:5 158:11,15,22 159:2,8,10 159:17,22 160:1,5,10 160:12,12,20 160:22 161:1 163:7,20,22	165:2,14 170:14 174:8 175:3 176:3 186:7 marketing-w... 163:15 marketplace 35:4 53:11 53:20 54:20 55:13 58:1 58:17 62:6 66:19 70:2 71:17 74:17 75:21 76:4 81:21 83:2,6 83:9,12 84:2 84:21 85:8 85:11 86:1,6 94:20 98:5 98:17 99:9 100:1 103:2 109:11 120:6 120:11 122:7 122:10 123:2 123:10,14,18 123:21 124:10,21 137:8 140:11 140:22 141:19 145:9 146:16 147:2 147:6,10,22 148:12,19 149:5,7,10 149:16,20,22 150:19 154:16 155:14 166:8 166:21 176:4 176:21 185:11 186:6 Masztak 1:16 2:2 4:4,12 5:3 7:3 8:8	8:16,20 11:5 11:14 12:7 13:17 14:1 14:10,16 16:7 17:15 19:21 20:7 28:13 39:18 40:4 42:14 42:16 43:7 43:21 46:18 49:13 50:19 59:9,9 60:15 60:20 67:11 75:4,10 77:17 90:3 112:4,16 113:19 165:2 180:20 186:15 187:15,19 Masztak's 4:18 17:11 match 77:14 materials 144:2 167:20 179:1 matter 5:14 7:4 19:7 26:11 29:1 31:2,8 33:6 50:3 61:21 62:3 93:2 94:7,8 95:11 95:17 96:13 96:15,16,17 97:6,18 98:10 100:14 106:19,20 118:11,20,22 129:11 149:9 171:5 188:7 188:10 mattered 18:20	matters 34:15 55:8 maximize 152:2 maximizing 151:11,15 152:5 mean 15:5 29:15 36:8 37:9 40:10 78:8 108:16 125:14 128:2 133:15 134:17,20 136:6,20 138:21 139:5 141:8 145:1 147:7 151:16 152:11 154:19 158:21 162:21 163:1 166:2 172:8 179:1 181:22 means 28:18 145:3 meant 13:11 media 128:8 137:6 157:3 161:5 162:17 162:20 medical 10:22 23:20 118:14 162:9 meet 186:20 meetings 132:10 memory 132:9 mention 154:12 167:5 185:8 mentioned 48:8 52:11 63:12 107:14
--	---	---	--	---

118:19 119:9 153:21 mere 136:4,10 138:20 139:1 139:4 merely 177:22 mergers 37:10 38:4 merit 2:3 82:8 188:3 merits 81:12 82:15 met 186:18 metric 134:21 million 170:13 171:17 174:18,19 mind 79:20 mindset 106:15 minus 121:11 165:22 Minuscrypt 134:3 minute 157:8 minutes 75:10 136:17 164:4 164:7 misleading 85:18 176:2 176:13 misspeak 76:20 misstates 57:15 61:19 62:20 70:13 72:7 73:7 74:11 75:18 95:3 113:22 115:14 157:16 159:21 170:6 171:1 moment 19:18	20:3 52:2 79:2 89:21 102:16 163:6 money 152:15 monitor 7:11 months 51:6 morning 8:12 8:13 130:18 move 11:15 89:21 moved 113:9 multiple 73:12 76:6 83:20 95:5,11 106:17 115:18 119:22 124:16 146:4 Mylan 130:22 N N 3:1 4:1 188:1 name 7:21 8:15 11:17 11:19,20 14:2 15:20 16:12 19:22 21:8 32:19 39:19 43:12 44:3 46:11 48:21 50:10 88:20 89:9 100:22 111:3 113:4 132:15 152:22 180:9 named 45:11 nature 39:14 40:12 45:19 66:11 68:14 69:21 76:15 84:17,18 97:3 nausea 94:10 NDA 124:12	necessarily 6:16 51:3 95:19 135:15 165:5 178:3 need 10:7,19 20:14 67:15 73:22 75:8 91:17 98:22 137:16 146:7 needed 18:18 140:6 needing 158:1 needs 83:18 negate 136:22 negated 138:4 net 120:22 121:3,5,10 121:15 123:3 165:16,18,21 184:4 185:4 185:6 Neuromodul... 5:19 111:12 116:13 never 21:19 24:4,19 38:18 127:15 138:11 163:4 Nevro 5:18 110:19 111:10 116:12,21 118:2,8,13 118:19 119:3 119:9 new 3:6,7 32:11 39:17 100:21 132:14 155:8 newer 181:13 nexus 24:17 25:14 26:1,9 53:1,16,20 54:8,9,14,19	55:4,14 56:1 56:11,17 57:4,11,20 58:9,12 66:13 71:9 73:17 78:20 80:18 81:6 81:18,21 82:17 93:13 93:17 94:19 95:8,16 96:1 98:13 99:9 99:17 100:18 102:12,22 103:14,19 106:9 108:19 109:4,19 114:8,19 115:5,17 127:15 129:2 136:7,12,20 137:1 138:3 138:7,21 139:6 140:18 141:16 182:13 185:10 186:3 nexus, 82:8 non-therape... 67:20 noncoexten... 97:2 nonobvious... 53:9,13 79:11 80:6 81:10 83:14 140:8 normal 178:1 normally 158:17 Northern 25:15 Notary 2:4 188:4,18	NOTE 6:13 notes 188:9 noticing 7:19 novel 61:16 74:8 83:11 number 7:8 21:22 34:1 66:17 75:14 76:18,21 101:12,14 140:13 numbers 60:1 76:22 120:1 numeric 65:4 numerous 9:10 96:7 160:17 182:1 NW 3:17 NY 3:7 O O 188:1 O'Quinn 3:12 4:5 7:21,22 8:11 11:12 11:20 12:4 13:7,12,15 13:22 14:6 15:18 16:2 17:9,13 19:17 20:6 21:1,4,6 27:21 34:7 35:16 36:2 38:6 39:16 40:1 42:8,13 43:10,16 46:9,16 48:6 48:19 49:3,5 50:9,14 51:22 53:5 55:1,18 56:14 57:9 58:6,21 59:8
---	---	---	--	--

59:14,17	170:17 171:6	126:19	offering 93:22	88:5 91:11
60:5,14	172:21 174:4	134:15 141:3	Office 1:1 7:8	92:20 93:1
61:12 62:11	179:16 180:6	144:17	9:7	94:6,13,19
63:11,20	180:13 183:1	148:21	okay 13:3	95:16,20,22
65:9,19	183:6 185:9	150:13	19:17 20:19	96:6,8,9,12
66:21 67:6,9	187:14	157:15	21:3 26:14	97:1,5 98:13
68:18 70:18	oath 9:19	158:19	32:5 59:2	99:8 102:22
72:11 73:21	90:15 153:12	159:20	60:8,15	103:8,9,10
74:21 75:2	object 10:16	168:11 170:5	102:18 113:8	104:2,3,4
76:9 78:5	112:3	170:22	121:2,7	105:18
79:18 80:9	objection	172:15	133:6 164:14	106:22 107:5
83:8 84:3	27:13 33:18	173:16 179:8	164:17 166:2	107:8 108:2
88:9,18 89:4	35:5,20	184:18	183:1	120:9 127:18
89:8,14,18	37:21 48:1	objections	old 141:10	143:17,18
89:22 92:3	51:16 52:19	48:11 89:1	once 10:6	146:8 147:4
92:11 94:16	54:16 55:10	101:3 111:14	127:4	147:13 148:6
95:18 96:18	56:4,21	133:7	ones 161:12	148:11,19
98:2 100:20	57:14 61:7	objective 53:9	open 21:7	149:14,21
101:7 102:17	61:18 62:19	53:12 83:13	164:9	150:16,16
102:20	63:15 65:1	140:7	operator 7:15	159:16 166:7
103:17 104:9	65:13,14	obligations	ophthalmolo...	166:18
105:7 106:4	66:3 68:7	151:18	177:4	168:15 169:9
107:9 108:6	70:12 72:6	obvious 51:15	ophthalmolo...	176:20
108:17	73:6 74:10	52:5,18	129:15	181:16
109:16	75:17 77:18	obviously	opine 61:10	opinions
110:13 111:1	79:21 82:18	139:9	68:11 108:1	14:19 15:11
111:7,16,22	83:15 88:2	obviousness	110:5 177:19	15:12,13
112:7,15	88:13 91:15	56:3 78:2	opined 61:13	17:4 18:11
113:8,14	92:7 94:4	82:22 105:13	76:3 91:5	29:10,13,16
114:5 115:19	95:2 96:3	occur 136:19	92:4	29:22 30:3
117:10	97:13 100:11	138:3	opining 29:17	42:2 53:3,3
118:12 119:1	102:13 103:4	occurred 38:5	40:19 54:2	54:19 62:9
119:14,16	103:21 105:3	69:20	61:21 92:12	65:22 66:2
124:6 126:10	105:15	ocular 62:14	119:2 120:3	66:17 69:14
127:13	106:10	62:16 67:17	120:4 127:14	70:7,14 71:9
132:13,18	107:16	67:21 68:1	opinion 27:16	71:13 73:10
133:5,9	108:13 109:5	69:6 72:4	30:3 39:11	74:3 75:20
135:1 141:22	110:1 111:18	odd 170:2	39:13 52:7,9	77:4,5,8,15
142:2 145:11	111:20	offer 97:1	53:6 54:13	78:21 80:14
149:13 151:1	113:21	offered 94:18	57:21 58:7	84:6,17,18
158:10	115:13 117:2	95:21 96:6	63:22 65:4	84:19 85:4,6
159:15 160:4	118:5,16	125:9 126:15	66:6 70:1,16	87:1 91:22
164:2,15	119:5 124:1	138:20	82:13 84:1	92:15 93:13
165:1 168:16	125:12	139:12	84:21 85:7	94:1 95:5,12

96:8,20 97:6	109:3,19	p.m 187:21	171:7 175:18	37:12,12,14
98:20 99:8	138:10 140:6	page 4:3,10,22	175:21	37:16,16,19
99:17,21	148:16	5:2,22 6:2	177:17	38:21 39:3
100:15,18	ordinary 23:16	13:8,13,13	paragraphs	39:12,20
103:13 106:6	organizations	14:14 17:12	114:11	40:2,15,18
106:16,18	22:1	20:4,22 25:4	115:11,12,16	40:20 41:2,4
108:22 115:2	originally 15:9	25:7 32:3,8	115:18 116:4	41:8,10,14
115:6 117:1	OTC 139:19	42:20 43:6	116:8 144:15	42:17 44:15
117:5,6	140:1 157:20	44:19 60:9	182:1	46:1,12,18
118:10,20	158:6	60:11 67:7	parentheses	46:21 47:2
129:6,15	outcome	85:20 90:5	89:10	48:8,9,10,13
130:6 139:12	27:11,17	90:21 91:1,3	part 28:3 35:4	48:13,17
144:14	28:4	92:10,17	35:8 40:15	49:9,10 50:8
145:15 149:2	outside 15:15	93:6,7,8,12	46:21 51:9	50:8,16,18
153:9 156:16	35:6,21 65:2	102:2 103:7	79:12 96:19	50:21,22
159:14	68:8 130:2	114:6,12	103:9,10	51:1,9,12
167:15 169:5	157:17	130:19,22	162:7 170:11	52:2,4,7,22
171:5 172:3	173:17 179:9	133:22 134:1	171:3 179:12	53:1,2,14,14
180:19	over-the-co...	134:2,5	180:19	53:22 54:1,8
opposed	94:12 124:9	135:21 136:2	184:22	54:10,11,21
18:22 116:2	161:9,13,14	138:15,18	partes 9:6 47:6	54:22 55:2
139:19 144:5	161:18,22	171:8,11,12	47:13	55:15,16,22
158:1	162:1,5,15	182:18,19	particular	56:8,12,13
opposite	overall 83:22	183:15,22	10:19 39:11	56:16,19
169:21	84:21 85:7	184:1	165:4,16	57:2,3,13
opposition	96:9 105:18	pagination	178:7	58:12,15,16
54:13	107:8	13:8 91:1	parties 3:2	58:19,20
optometrist	owner 1:10 3:9	Paper 5:17 6:3	7:19 36:14	59:11,11,18
24:1	5:20 6:6 8:1	111:8 113:5	170:1 188:12	59:20,22
optometrists	37:12 48:10	113:15	partly 104:14	60:6,9,12,18
177:4	49:9 78:1	116:14,22	party 36:17	60:19 61:15
optometrists'	111:12	paragraph	37:4 130:12	61:16,22
129:15	182:12	76:7 78:16	pass 31:17,22	62:1,14
oquinnr@fin...	owner's	80:11 81:8	patent 1:1,3,10	64:12 65:20
3:14	182:13	82:3 84:4,10	1:12,15 3:9	66:14,15,22
Orange 86:8	owners 36:10	85:10 99:20	4:19 5:8,12	67:2,7,13
92:21 94:2	37:16 52:22	104:10	5:20 6:6 7:7	68:4,6,16,16
94:15,22	80:7	115:21 142:7	8:1 9:7,7	68:19 69:3
96:2,7 100:2	owns 124:12	143:11	10:3 12:6,20	70:15,16,17
100:5 108:20		145:22	12:21 13:1,1	70:20,20,21
109:18		146:20	15:8 17:15	70:22 71:2,3
order 82:16	P	147:18 151:2	18:10 28:9	71:5,6,10,11
83:22 84:12	P 3:1,1,5,12	152:21	34:16,16,18	71:14,15
84:15 95:15	P&L 171:21	166:11,14	36:10,11,13	73:19,20
	172:2 175:7			

74:19,20	52:18 58:11	percentage	166:22 176:5	pharmaceuti...
75:5,11,12	68:12 86:8	83:9,18	176:22 177:7	24:9,16 28:9
75:14 77:9	92:21 93:1	119:17	185:11 186:6	34:3,4,5,9
77:11,12	93:18 94:3	120:17	performed	36:5,6 40:21
78:1 80:7	94:15,21	121:14,19	100:17 163:5	41:5 81:7,22
82:21 85:1	95:1 96:2,7	165:16 166:4	186:2	123:20 124:8
86:7 87:22	99:15 100:2	175:12	period 155:4	124:11,16
88:5,12 95:6	100:6 108:20	percentages	176:22 177:1	125:8 126:15
95:9,17	109:19 110:8	122:6	person 16:16	151:3 152:13
96:21 97:3,3	110:9 117:14	perform	23:16 29:9	178:2
97:4,6,8,9,12	117:15	145:14	61:10 134:18	pharmaceuti...
97:12,20	137:11 138:8	performance	personal 25:8	25:13,14
98:7,8,16	140:19	53:8,11,17	personally	118:14 131:1
99:18 100:5	149:16 170:1	53:20 54:7	17:22 45:3	131:1
100:19	patient 69:6	54:20 55:4	perspective	phrase 140:15
111:12	patients 24:5	55:13 56:17	39:9 47:3	phrased 16:15
113:17 116:1	129:8	57:5 58:1,9	61:1,3 104:7	159:9
116:2,9	Patricia 2:2	58:18 62:6	pertained	phrases 69:15
119:13,13	188:3,18	66:20 70:2	180:15	70:9
125:2,3	Patrick 3:16	71:17 74:18	pertaining	physicians
129:4 131:3	8:3	75:22 76:4	113:16 183:9	129:7
137:14	Patty 7:13	83:10 84:2	petitioner 5:10	Pittsburgh
140:10	pause 93:10	84:22 85:8	5:19 47:12	8:18
141:17,18	PDF 13:7,13	85:11 86:1,6	48:16 49:8	place 28:6
142:14,16,22	32:3 43:5	97:22 98:5	111:11	plaintiff's
149:12 150:2	90:5,21	98:17 100:1	Petitioner's	103:10
150:3 156:2	92:17 93:6	103:2 109:11	49:17	plan 10:5
156:3 159:12	114:6 130:19	120:11 122:7	petitioners 1:7	platform
159:13,19,19	133:22	122:10,13,21	3:4 6:5 7:6	162:17,20
173:15	135:21	123:2,10,15	8:6 48:10	play 104:18
180:16 181:2	138:15	123:18	182:9	110:12
181:2,3,14	182:18	124:21 136:8	petitioners'	plays 57:21
181:15	pending 10:9	137:8 139:14	4:12,16 5:4,6	please 7:17
182:12,13	Pennsylvania	139:16	16:6 42:16	8:14 13:8
183:9 184:14	2:5 8:18	141:19 145:9	43:19 110:14	14:3 15:21
184:16	22:14 188:5	146:17	113:1,17	19:22 32:4
185:12,18,18	people 154:20	147:11	petitions 47:7	42:10 43:13
186:12,13	155:22 157:6	148:12 149:5	47:19	48:22 59:20
patented	percent 62:15	149:7,11,20	pgs 4:14	60:10,13
81:12 82:16	64:15,16,20	149:22	pH 62:17 67:22	67:6,8 88:21
103:1	64:21 67:17	150:19,21	156:19	89:5,7,19
patents 39:3,6	68:21 69:8,9	154:16	Ph.D 3:12	101:1 102:19
47:8,11,14	72:3 74:6	155:14 160:2	pharma 5:11	111:4 113:7
47:20 51:14	142:14,20,22	164:1 166:8	49:8 127:5	114:7 132:15

134:1 135:22	61:3	15:12 102:5	146:16	process 18:8
138:16	preceding	114:17	147:11 149:4	105:22
166:11	176:14	182:10	149:9,11	164:14
175:18 183:3	preclude	preservative	150:4,21	187:12
PO 114:18	105:10	173:1,5,13	154:11	Procter 3:5
115:22	prefer 164:10	175:1,9,17	155:19,20	38:8
PO's 114:19	preliminary	preservative...	156:7 157:9	produced
point 54:12	26:18 28:2,5	174:2	159:4 160:3	129:10
81:2 107:5	167:14,18	press 178:16	186:8	product 24:20
107:10	170:19	pretty 29:5	private 151:20	26:7,19
110:20	premised	87:22	probably	34:14,21
126:12 159:6	156:4	previous	19:10 30:2	35:2 39:6,12
161:21 167:3	prep 132:7,10	48:14 91:3	37:14 109:8	47:22 48:5
173:22	preparation	previously	132:4 162:4	53:8 54:7
174:15 175:7	44:10,12	9:14 32:5	163:2 164:4	72:13 73:4,4
pointing 167:3	51:2,3 132:1	34:17	187:11	78:7,11
170:12 174:7	132:11	pricing 103:12	proceeding	82:10,14
174:12	186:17 187:4	104:16 105:9	5:18 6:3 9:6	83:1,2,7,10
175:14	187:9	107:2,11	9:13 12:5	84:2 94:11
176:18	prepare 17:18	126:4	14:8,9 16:4	94:20 118:21
pop-up 128:7	44:21 133:21	primarily 46:6	20:11 26:12	120:15
portfolio 152:7	186:14	137:14	28:3 43:3	121:14
152:14	prepared 45:1	primary 17:6	44:2 46:2	122:16,21
portion 92:2	preparing	45:10 91:12	49:7 57:12	123:20 124:8
145:7 154:8	16:20 18:9	91:21 147:1	111:9 113:16	124:21 125:6
154:9 155:3	18:11 19:3	147:5,20	118:3 133:21	125:9,15
156:8,16	113:20	148:7,18	135:13 183:8	126:8,15
167:2 173:2	prescription	186:8	184:15	127:5,6,7,9
175:17 187:9	124:9 139:21	principles	proceedings	128:4,9
position	161:16	112:3	14:12,18	136:5 139:19
150:10 170:4	prescription...	prior 50:6 57:7	15:13 23:17	139:20,21
positive	162:8	58:3 61:17	26:19 28:11	140:4 141:1
158:17	presence	62:7,18 63:2	29:13 30:7	152:7 154:16
possible	128:8 137:7	64:5 66:12	30:14 34:22	154:17,22
128:18	161:4	70:4 71:18	41:22 50:4	156:1 157:20
post 23:6	present 3:20	72:5,10,13	53:7 58:8	158:6,9,12
potential	64:14 69:7	73:12,16	61:14 70:17	158:16 159:1
41:11 97:22	127:17	74:8,17 76:1	92:13 96:22	159:2,7,8,10
136:12	presented	85:13 86:13	131:15 132:3	165:13
potentially	15:14 36:16	99:13 123:13	132:20 133:1	169:15 173:7
169:14	37:3 99:4,6	129:1 141:21	133:4,11	173:13 175:1
power 164:9	115:2 130:3	142:8,13	168:8,19	178:4
practice 11:11	130:8	143:2,16,21	169:22	products
practicing	presenting	145:16 146:4	170:20	33:16 34:6,9

41:11 74:7	promoted	158:1	101:1 103:12	quote 6:16
81:22 82:1	125:19 126:9	providing 10:1	105:19	79:3 152:21
104:16 110:9	promoting	29:12	109:14 113:5	168:8,19
117:16	127:6,9	provision	121:22	
118:21	promotion	155:13	122:16	R
124:19	24:12 71:21	PTAB 5:18 6:3	123:16	R 2:2 3:1 188:1
125:17,18,20	120:7,18	48:17 57:18	124:18 128:8	188:3,18
126:13 127:3	121:16	111:9 149:8	128:9,22	ramped 155:6
127:4 135:10	123:22	163:21	130:18 135:7	158:3,3
141:9 150:22	124:11	public 2:4	135:17 150:5	range 64:20
152:12,14	125:10,16,18	11:16 22:10	156:13 167:8	65:4
154:21	126:17	134:4 151:20	169:6 173:21	ranked 84:12
160:14,16,18	127:17 128:6	188:5	184:21	ranking 84:15
160:21 161:4	151:6 158:4	publications	putting 64:6	rate 18:22 19:1
161:7,8,10	158:11,15	21:16	80:4 98:18	rates 18:21
161:13,14,16	165:3,15	publicly 89:16	122:18	re-read 102:16
161:18,22	166:19 167:5	pull 15:19	176:20	read 6:15
162:2,5,9,15	170:14	27:16 50:9		40:13,17
163:15	171:14	90:13 112:7	Q	47:1 67:10
166:15,21	174:14 176:3	132:13	qualifications	86:2 103:15
167:6,10	promotional	pulled 110:22	15:16 16:12	110:14
168:9,21	85:21 119:19	116:18	18:18 44:3	117:12 143:9
169:7,10,15	184:3	133:14	quantitative	147:8 148:9
171:16	promotions	pulling 129:19	122:6	148:9 174:6
179:14	166:6	purchase	quantitatively	reads 99:19
professional	pronouns	154:20,22	97:11 123:5	147:18
22:5 24:5	18:20 44:4	155:16 156:1	question 10:8	175:21
professionals	proper 113:3	158:8,8	10:13,19,20	really 18:20
153:2,21	135:12	159:1	31:19 36:22	185:16
155:5	properties	purported	55:20 68:13	Realtime 2:4
profit 54:3	104:15	81:11 82:15	99:1 102:19	188:4
151:11,14,21	property 11:10	purpose 47:3	104:8 109:9	reason 10:22
152:5	28:12	put 15:18	121:8 129:14	36:15 58:11
profit-gener...	proportion	19:17 28:6	129:18 139:2	64:7 83:6
179:5	98:4	39:16 42:2	questions	85:10,16
profits 135:4	proposition	46:3 59:9	10:12 11:3	86:4,12
152:2,19	82:3	63:7 66:16	31:13,14,16	130:13
project 179:6	protective	66:19 67:1	31:21 43:20	reasonable
projected	95:15	70:6 71:22	77:10 129:13	30:3
174:16	provide 53:9	72:16,22	133:19	reasoning
promote	53:12 65:10	74:2 75:8	187:16,19	179:22
122:15	provided	77:22 78:4	quickly 25:12	reasons 70:10
124:19 125:6	21:22 84:9	79:12 89:18	quotations	84:10 86:14
152:22	87:10 117:11	98:11,12	6:13	86:16 95:22

99:21 152:11 179:18 rebates 121:4 121:11 138:21 139:5 139:13,21 165:22 rebound 72:17 73:2 rebut 100:16 153:17 rebuttal 99:7 115:5 153:19 rebutted 53:3 72:20 109:13 115:8 rebutting 71:13 78:3 80:8 174:1 recall 35:18,22 80:21 116:19 117:19 144:4 182:15,16 184:12 recess 59:5 112:12 164:20 recitations 75:14,15 recited 53:18 61:14 recites 64:13 67:14 recollection 27:19 recommended 129:7 record 6:15 7:2 8:15 22:3 28:17 57:15 59:4,7 72:7 73:7 77:4 88:22 91:20 101:2 111:13	112:11,14 115:14 133:3 134:4 157:16 164:19,22 168:7 170:7 170:20 171:1 172:19 175:6 redacted 92:2 95:13 Reddy's 1:5,6 6:4,5 7:4,5 8:6 47:6,12 47:19,21 48:4 51:13 168:6,18 169:21 178:8 178:14,17 179:4,11,13 179:18,21 180:2 redness 67:16 135:18 143:5 155:22 157:11 reduce 143:4 reduced 68:1 175:22 reduction 67:15 155:22 157:10 refer 83:1 160:10 186:7 reference 41:17 121:1 144:1,4,6,10 145:13,20 168:14 177:22 178:4 referenced 30:5 117:7 references 73:12 129:12 143:11 185:18	referencing 146:3 referred 57:4 98:20 125:5 163:8 165:9 165:21 181:5 referring 45:9 79:8 121:2 121:18,19 151:9 160:16 165:18 168:2 178:21 185:21 reflect 178:3 reflected 6:14 reflects 177:22 refresh 20:22 27:19 90:12 regarding 54:19 71:13 92:20 93:1 93:13 94:1 97:2 102:6 103:13 106:6 129:6,16 131:4 regardless 19:15 140:14 regards 176:2 Registered 2:3 188:3 relate 62:1,22 97:7 100:15 143:12 related 9:10 25:20,22 26:7,8,18 30:3 32:15 32:21 34:17 40:20 41:2,4 41:10,11 48:4 51:20 53:1 57:5,19 58:5 62:4,7	63:2,6,18 64:7 65:7,16 66:15 69:18 70:15 72:16 73:1,10,18 74:15 75:21 75:22 76:6 77:11 78:1 79:13 84:1 91:22 94:7 94:13 95:16 96:6 97:21 99:8,12 103:11 110:22 123:6 125:1 135:17 136:14 137:1 137:11,14 139:13 140:14,18 141:16 143:20 145:5 145:6 154:4 159:11 160:18 169:8 181:14 186:7 relates 62:5 70:1 79:10 97:16 135:9 150:16 169:7 175:8,9,16 relating 65:22 110:19 153:16 relation 57:3 relationships 152:16 relative 188:13 release 178:17 relevance 27:14 33:19 48:2 91:16 92:8 94:5 96:4 101:4	102:14 103:5 103:22 105:4 107:18 111:15 168:12 relevant 52:17 134:8 135:5 135:12,15 140:15 reliance 41:18 145:5 reliant 143:17 relied 63:17 64:10 111:16 relievers 135:18 rely 41:9 65:5 65:15 69:21 72:8 112:2 144:12 relying 30:1 146:13 remaining 164:4 remember 16:16 33:9 137:12,13 167:11 173:2 173:4 remotely 2:2 3:2 7:12 removed 182:2 repeat 36:22 102:19 repeated 72:18 replacing 16:12 reply 4:12,16 5:4,6,10 16:6 42:16 43:19 49:17 110:15 113:1,17
--	---	--	---	--

182:8 report 13:5 29:22 84:5 147:8 171:8 177:17 187:13 reported 188:6 reporter 2:3,4 7:13 79:17 188:4,4 REPORTER'S 6:13 reports 28:22 86:19 131:20 represent 7:18 89:15 represented 33:5,8 36:17 representing 7:22 8:5 37:4 reps 177:3 requirement 108:10,16 109:2,18 119:4 138:6 requirements 109:8 resolved 26:22 28:1 resources 151:5 respect 61:6 177:21 181:7 respond 42:1 responded 134:9 136:9 responding 180:22 181:1 181:12 183:10 rest 132:8 Restasis 136:8 137:10 139:8 139:20	Reston 3:13 result 119:18 retained 36:6 36:10 37:15 130:12 return 151:21 152:7 returning 155:9 returns 121:4 121:12 165:22 revealing 26:4 revenue 54:3 120:14,17,21 165:16,19,21 184:4 185:4 review 9:6 12:15 20:13 31:1,7 42:1 47:6 51:1 52:9 80:13 116:21 129:5 129:22 143:22 153:6 167:13,17,21 168:17 178:16 181:8 184:22 187:2 reviewed 17:22 18:4 40:6,10,17 45:4,14,16 45:18,21 46:17 47:1 50:21,22 51:4,11 80:15 113:19 118:19 130:4 144:4,5,9 167:20 169:4 171:4 172:2 172:5 178:19 180:18,21	181:9,11 186:16 187:7 187:8 reviewing 18:19 173:2 reviews 47:13 right 9:20 11:22 12:18 13:14,14 17:12 35:14 39:12 43:8 54:5 57:13 59:13 60:3 61:6 64:12 64:12 67:1 68:6 69:4 74:21 87:7 88:1 90:9 93:10 95:1 96:2 99:5 115:21 132:9 136:6,8 138:4 148:3 148:7 154:18 155:14 156:7 156:11,18 162:12 164:3 164:15 174:18 175:12 177:12 181:10,20 183:11,14 right-hand 59:19 rights 48:4 178:14,17 RMR 188:18 role 16:19 25:19 26:5 26:17 29:4 44:9,12 49:18 50:2,3 50:6 104:18	139:22 roughly 10:5 rule 137:18,21 138:1,5 139:3 rules 9:16 run 152:1 Ryan 3:12 7:21 S S 3:1 4:7 S.A 1:5 6:4 7:5 safe 29:20 safety 63:7 66:9 72:16 73:1,14 74:5 146:2 sale 126:15 sales 32:8 54:3 57:7 58:4 66:18 91:6,8,13 92:6,14 119:18 120:22 121:3 121:3,5,10 121:11,15 122:1,2 123:3 125:6 127:21 128:7 128:15 134:7 134:20 135:4 135:7 150:17 150:18 153:12,14,21 157:13 165:10,21 168:22 169:11,15 173:19 176:17 177:3 177:8,9 185:6 sample 154:18	155:12,13 156:20 158:6 samples 122:18 128:7 155:7 157:4 157:13 158:5 sampling 128:11 137:6 153:2 154:12 154:14,15,19 154:21 155:2 155:19 158:22 Sandoz 32:9 33:5 saw 102:7 153:11,15 saying 37:2 45:8 99:11 126:8 138:2 145:4 150:8 182:10 says 28:12 68:20 69:4 89:10 104:12 114:16 115:22 136:4 138:22 146:22 scheduled 27:6 132:7 school 23:6 38:19 Sci 116:13 science 23:16 29:18 scientific 5:19 29:21 111:11 116:13 scientist 23:12 scope 35:6,21 37:22 48:2 51:17 61:5 61:10 63:16
---	---	--	---	---

65:2 68:5,9	82:11 84:7	148:16	121:22	skill 23:16
68:11 89:3	85:14 86:10	171:10 174:6	122:13,17,19	Slayback 5:10
97:14 101:4	90:3 91:9,10	175:20 176:9	123:14 125:4	48:15 49:8
117:3 118:6	91:22 93:3,4	182:10	127:2 128:10	178:9 179:15
118:17 119:6	93:20,21	sentences	137:5 141:20	179:19 180:3
124:2 125:13	104:20	16:15	146:18	Slayback's
148:22	111:17 114:9	separately	147:10	178:18
157:17	114:21 116:5	21:10 130:1	149:10 150:4	slight 88:10
173:17 179:9	116:6,15,16	serves 132:9	151:4 160:9	107:12
screen 12:16	129:20 131:5	Services 7:14	161:4,17	slightly 16:16
12:20 32:3,5	134:11,12	7:16	162:1,6	55:20 103:16
44:11 56:20	136:13,14	session 132:7	163:7,10,20	105:2 140:3
59:10 64:12	142:17 143:6	set 14:19	165:3,15	140:4
68:6,15,20	144:2 151:7	setting 21:20	174:10	social 128:8
69:4 75:1,8	151:12 155:1	21:21 125:22	significantly	137:6 157:3
89:5 90:10	157:19	Shannon 3:16	155:6	161:5 162:17
94:9 101:1	167:19	8:3	similar 46:7	162:20
103:7 104:11	171:18 173:8	shannon.pat...	50:3,6 75:20	sole 62:16
105:6 115:21	176:6 178:5	3:19	76:3,13,15	67:18 68:22
130:19	178:6,22	shaped 80:21	76:22 77:12	72:4 83:6
182:18	182:21,22	share 104:19	77:15 86:16	solely 29:22
scroll 44:5	184:6,7	140:6,14,17	93:22 165:8	solution 35:19
49:4 93:7,14	seeing 59:21	140:19 184:4	181:21	somebody
second 13:9	seeks 47:21	shared 20:4,4	Similarly	109:9
26:2 147:17	seen 16:7 40:3	113:10	95:10	sorry 13:6,10
secondary	45:18 49:12	shareholders	simple 105:8	25:21 26:15
79:11 80:5	50:18 55:16	151:19 179:4	single 96:8	31:5 32:4
104:4 109:20	101:21	179:11	122:11	36:21 43:7
114:20	160:13 161:2	short 164:8	147:13	93:9 162:14
182:14	161:3,7	shown 60:22	177:10	168:2
section 18:18	163:18 172:8	103:7	sir 8:12	sort 119:3
78:15 84:5	172:10,17	side 36:13,20	sit 14:20 35:14	169:2
102:16	175:6,10,16	36:20 37:7,7	36:1	sounds 117:21
114:16	180:4 187:12	37:14 59:10	sits 87:17	156:18
115:17 142:8	sell 152:14	59:10,19,19	sitting 35:17	170:12
see 12:7 13:8	selling 125:19	64:12 66:22	63:21 80:20	source 153:22
14:21 17:16	152:12	67:5 68:6,20	124:7 146:11	speak 19:2
28:15 32:13	senior 45:11	69:4	175:11	30:10,17
35:13 42:19	sentence	signature	situation	35:15
42:20 44:6	14:16 103:15	13:16 43:7	56:10 141:8	speaking
46:18 60:15	104:12	significant	160:18	174:5
64:17 68:2	115:20 143:9	71:20 99:14	situations	specific 33:22
69:1,11,12	143:13	104:18 107:2	152:10	79:19 80:4
79:6 81:13	147:17	120:10	six 9:1,3	80:21 81:3

83:18 86:22	statement	substantive	summary 84:6	123:12
100:7 123:6	15:1 37:1	75:13	84:17,17,18	124:14 163:4
129:14	81:16 168:14	substitutable	98:20 144:6	170:3 188:10
152:13	171:22 172:3	125:20	support 4:12	talk 86:14
165:10,11	174:13	substitute	4:16 5:3,6,9	146:1
166:3,4	176:12,15	14:11	16:6 42:16	talked 86:12
178:20	statements	success 24:17	43:19 49:16	122:12,22
specifically	176:1	26:1,9 52:17	81:9 143:11	123:7 126:1
10:18 63:3	states 1:1	53:1 54:4,6	sure 9:17	149:4 156:9
103:11	22:16 32:10	54:15 55:6	18:19 20:19	159:3 160:19
172:19	92:10 105:6	56:2 57:4,12	35:13 51:19	161:12 165:9
specifics 63:4	120:16	57:20 71:9	73:22 95:12	talking 95:7
69:18	121:13 125:9	77:16,21	98:22 102:17	113:1 128:5
speculation	126:16 175:5	78:20 79:3	110:21	146:1 147:12
88:3,14	stating 95:20	79:13 80:3,5	118:21 150:7	155:2 185:3
106:11	stenographic	80:18,22	181:8	185:6 186:9
107:17 110:2	188:9	81:6,10,21	surprise 168:5	talks 156:14
157:17 179:9	stop 127:6	82:9,14,21	surveys	tartrate 33:17
184:19	strategies	83:2,3,7,13	129:10 130:1	34:20 35:19
spent 166:20	103:12	94:20 97:17	130:5,8,13	64:1
spoke 30:21	104:17	98:10 99:9	153:20 177:2	tartrate-timo...
spoken 30:7	120:12,19	100:14 102:7	suspended	32:16
30:14 179:21	strategy 107:2	104:14 105:1	22:21	taught 21:19
spreading	121:16	105:12,20	switch 17:10	TCD 26:15
93:6	Street 3:12,17	106:8 109:13	sworn 8:9	team 17:20
stand 12:1	strong 76:16	109:21 115:5	188:8	18:3,6 44:22
22:4 113:6	subheading	116:1 120:6		45:6,8 132:8
standards	114:7	123:9,21	T	187:7
41:15	subject 102:8	124:10	T 4:7,15 5:5,9	teaming 157:4
standpoint	subjective	127:16 134:7	6:7 16:5	technical
56:9	162:3	134:22 135:2	43:18 49:16	29:12,16,21
start 140:12	submit 31:12	140:7,9,11	188:1,1	31:16,21
started 9:16	31:14	141:2 147:2	tachyphylaxis	39:9,14
18:16 158:2	submitted	147:6 148:1	72:18 73:3	40:12 41:9
starting 78:16	10:2 20:12	148:20	take 10:5,6	41:19 47:2
91:2	20:14 75:6	149:17 177:6	44:18 46:9	60:22 61:3
starts 171:11	111:20	178:3	58:22 66:21	66:11 68:12
state 7:18 8:14	131:14	successful	74:22 75:3	68:14 69:21
22:13 81:9	submitting	78:7,11	112:8 119:14	144:12
163:19	19:7,10	179:7	141:22 147:8	techniques
stated 70:11	substance	suit 93:2	164:6,8,16	122:3
104:22	16:17 112:18	suite 3:13,17	taken 2:2 6:7	tell 164:2
106:17 107:3	substantial	167:10	7:4 21:14	ten 162:5,22
154:10	187:9	sum 25:7	120:13	ten-minute

59:1 164:12 164:16 term 82:22 83:4 128:17 163:6 185:4 terminology 18:20 terms 63:5 76:11 119:22 162:3 180:2 test 140:12 testified 8:10 52:1 75:9 79:1 86:17 87:2 88:7 97:4 107:21 136:16 153:12 157:8 161:9,19 172:22 testify 37:8 112:6 testifying 15:9 25:8 29:1,11 30:6,13 49:22 50:7 131:11 151:9 testimony 5:13 9:5,12,18 10:1 63:14 77:2 87:10 88:21 89:11 90:7,16,18 91:18,22 101:18 102:8 106:18 112:19 113:22 117:12,19 134:12,19 136:14 153:15,16 161:11 167:13	168:18 169:5 170:9,19 172:6,13 173:1,3 176:1,12 188:10 Teva 131:1 Thank 13:13 21:4,5 32:5 33:1 44:6 112:17 164:17 187:14,17,20 theories 86:15 theory 108:11 Therapeutics 5:13,16 26:3 87:4 88:20 89:9 92:5 94:17 95:11 101:10,17 Therapies 1:9 3:9 5:11 6:5 7:7 8:1 47:15 48:9,16 49:9 thing 108:2 148:9 things 83:21 96:13,15 146:5 149:8 157:22 161:6 182:3 think 9:1,2,3 20:21 30:2 37:13 38:11 52:1 56:6 58:13 68:13 75:9 76:16 81:2 85:5 88:16 105:17 106:13 108:3 123:7 124:8 125:4,15 126:7,21	127:1,10,10 128:19 129:20 134:10,17,20 136:16 137:9 137:13,16,16 139:8,16,17 140:10 141:5 141:6,11 144:21 145:18,19,22 147:7 149:1 151:16 152:8 152:18 153:5 153:17 155:16 157:1 157:2 158:21 160:10 162:7 163:11,21 164:3 165:5 165:6,9 167:1 172:9 173:6,19 175:6,11 176:14 178:13 185:3 185:8 186:22 thinking 128:20 third 130:12 thought 33:21 34:12 36:22 106:15 108:4 168:20,22 thoughts 106:2 three 85:3 141:10 threshold 78:6 78:9,14 Thursday 186:22 TikTok 161:5 162:17,20	time 7:11 10:17,17 36:4,11 37:17 38:5 48:15 80:15 80:16 81:20 95:14 114:4 121:9 122:4 128:13 161:15,18 162:6 163:3 times 3:6 8:22 9:1 10:7 22:1 37:13,14 38:7,11 48:7 127:8 132:6 145:21 163:13 181:5 tipped 107:12 title 11:7 44:6 today 8:2 9:19 10:1,12,17 11:3 12:13 20:15 29:14 35:17 36:1 48:7 50:5 51:4 63:21 80:20 97:5 123:1 124:7 146:11 149:4 160:9 161:12 175:12 180:17 181:5 182:9 185:6 186:7,10 187:16 today's 7:10 51:2 186:14 186:21 told 168:6 tolerability 63:8 66:10 72:17 73:1 73:15 74:5	146:2 top 40:9 119:21 topically 67:14 total 25:7 totality 147:8 147:14 totally 162:18 touts 163:14 trade 32:19 88:16 Trademark 1:1 7:8 transcript 4:8 89:16 91:1 93:12 101:18 132:21 134:1 138:18 167:22 188:9 transcripts 163:17 167:16,21 168:3 treated 24:4 trial 1:3 5:13 9:7 10:3 27:2 27:5,9 52:2,7 55:2,22 56:8 56:16 57:2 65:20 87:7 87:11,13 88:21 89:11 89:17 90:2 107:21 131:3 170:9,11,19 184:14 trier 104:3 tries 152:1 true 15:1 90:18 188:8 truthful 11:2 try 36:18 155:8 155:11 179:13
--	---	---	---	--

trying 89:21 120:2 123:9 152:18 158:7 163:15 167:9	14:10 34:19 35:1 47:18 48:3 52:12 52:14,21 55:19 69:19 70:4 77:14 85:12 109:10 124:5,15 127:12 128:22 138:8 139:11 141:7 141:12 142:12 144:22 146:8 146:9 155:17 159:10 165:12 181:4 185:22	10:13 15:17 145:1 168:4 undertaken 100:10 146:12 undertook 135:3 unique 77:8 82:8 83:4 161:1 United 1:1 32:10 120:16 121:13 125:9 126:16 university 21:20,21 22:7 23:6 unrelated 74:18 145:10 159:18 unsuccessful 78:12 unsupported 168:10 updated 181:22 182:1 183:16 upper 136:6 USA 5:14,16 26:3 101:11 131:2 use 13:3 39:19 43:1 72:18 142:5 148:13 user 158:16 users 159:1 169:1	97:11 123:6 variety 34:1 various 22:1 79:10 83:21 99:11 106:16 120:12 123:3 128:6 158:5 version 47:21 95:13 172:14 183:16 versus 5:16 7:6 25:14 26:3,15,15 27:22 32:9 45:14 46:2 77:5 78:12 97:12 98:7 101:10 110:11 117:18 131:2 VI 78:15 viable 111:18 video 7:3,11 7:14 Video-recor... 2:1 Videographer 3:22 7:1 11:18,22 13:10 20:3 59:3,6,12,15 60:3 67:4 89:6,20 112:10,13 113:6,9 164:18,21 187:20 view 37:12 53:16 85:2 173:5 Virtually 125:8 126:14 visiting 177:3 vitae 4:18 20:8	volume 7:2 62:15 64:15 64:16,20,21 67:18 68:21 69:9,10 72:3 74:7 142:15 142:20 143:1 volumes 122:17 vomiting 94:11 vs 1:8
U				
U.S 1:12,15 4:19 5:8,12 7:7 9:7 12:6 40:2 42:17 46:12 49:10 50:16 101:13 142:16 177:12 ultimate 138:5 underlying 130:10 180:2 undermine 136:11 understand 9:18,22	understandi... 15:2 34:5 47:4,5,9,16 47:17 48:12 52:6 56:15 57:1,22 62:2 62:12,21 64:3,19 65:16 66:10 71:12 72:2 72:14 74:1,4 74:14 77:21 79:2 80:2,2 80:22 81:17 88:5,17 124:19 137:3 143:20 156:12 165:7 173:11 178:10 179:17 180:1 understandi... 41:10 63:9 69:22 71:19 72:9 understood	v v 5:11,13,19 6:5 116:12 VA 3:13 validity 47:7 value 93:17	view 37:12 53:16 85:2 173:5 Virtually 125:8 126:14 visiting 177:3 vitae 4:18 20:8	W waive 104:4 waiving 111:22 walked 99:12 want 12:14 21:7,9 39:19 43:19 59:22 73:10 76:20 90:13 121:20 136:1 144:21 146:3 150:7 152:14 164:12 172:19 177:14 181:7 183:21 wanted 36:18 37:5 way 16:10 33:21 36:16 37:2,10 44:1 93:8,9 130:21 138:12 152:1 183:18 ways 75:13 we'll 12:15 19:18 111:18 112:9 135:22 136:3 we're 21:9

29:14 34:13	35:22 38:1	69:14 117:20	104:6	188:18
37:14 44:10	48:3,12	117:20 160:8	York 3:6,7	10:07 59:7
50:5 94:12	51:18 52:21	wording		1001 39:20
95:6 118:3	54:18 55:12	129:21	Z	46:12 60:4
123:17	56:6 57:1,17	words 60:21	zero 136:11	67:2,4
127:12 128:5	59:2 61:9,20	61:4 68:14	zoom 59:16	10018 3:7
128:20 139:7	62:21 63:17	71:4,5,8 82:6	60:10,12	1002 50:11,15
146:1 154:7	65:3,15 66:5	148:13	67:8 134:2	101 5:15
187:21	68:10 70:14	167:11	0	1047 48:21
we've 36:14	72:8 73:8	work 11:5	0.001 64:15,20	49:6
58:21 70:19	74:12 75:19	24:14 33:22	69:8	11 5:13 88:19
70:21 83:4	77:20 80:1	38:13,14	0.025 62:15	89:12
99:12 122:11	82:20 83:17	40:15 45:1	67:17 68:21	11,596,600
149:4 162:4	88:4,15	46:21 51:9	72:3 74:6	1:12 5:8
163:19 164:5	91:17 92:9	179:13	142:22	42:18 46:13
180:16 186:9	94:6 95:4	worked 9:10	0.03 142:14,20	11,833,245
Wednesday	96:5 97:15	14:16 15:4	0.05 64:16,21	1:15 4:19
90:2 186:21	100:13	17:1,21 24:8	69:9	12:6 40:3
week 19:8,9	102:15,18	24:19 34:12	1	11:09 112:11
19:10	103:6 104:1	34:17 36:14		11:24 112:14
weighed	105:5,17	38:8 45:7		111 5:17
106:16	106:13	working 38:12	1 4:11 7:2,2	113 6:3
Weighing	107:19	wouldn't 84:14	11:14 12:2	1132 132:21
104:12	108:15 109:7	wrong 15:15	16:11 17:10	1162 15:21
weight 62:15	110:4 114:1	X	17:14,18	16:3 43:12
64:15,16,20	115:15 117:4	X 4:1,7	18:1,10	1198 180:9
64:21 67:18	118:7,18	Y	44:20 60:10	12 4:11 5:15
68:21 69:9	119:8 124:3		60:12,18,19	101:5
69:10 72:3	125:14	yeah 21:1	61:6,15,16	12:21 164:19
74:6 105:19	126:21	59:17 60:5	64:11,13	12:32 164:22
106:1 142:14	134:17 141:5	90:12 91:2	67:8,13 68:4	12:56 187:21
142:20 143:1	144:20 149:1	114:1 181:22	68:5,15,16	1202 19:22
welcome 10:6	150:15	184:20	68:20 69:3	20:11 21:8
42:22 112:16	157:18	year 87:7,9	70:20,20,21	130:17
went 87:7 95:5	158:21	174:19,20	70:22 71:2,2	1203 11:15,21
whatsoever	159:22	177:10	71:4,5 75:7	42:10
29:13	164:11,17	year-by-year	117:8,9	1279722
whichever	168:13 170:8	177:10	142:3,15	188:18
59:16	171:2 172:17	years 38:12	143:14 187:3	13 5:17 111:5
William 87:14	173:18	81:5 162:22	1:22-cv-985-...	132 6:7
witness 3:4	179:10	163:1 167:7	101:15	14 4:14 6:3,7
4:3 8:6 15:9	184:20	yep 21:5 89:20	10 5:12 50:11	91:3 113:12
21:3,5 27:15	187:17 188:7	182:16	50:12,15	133:1
33:20 35:7	word 40:9	yes-or-no	59:10	1400 3:17
			10/23/2025	

142 184:15	2022-142 49:7	51:6,14	28 4:14 184:2	183:8
15 4:15 6:7	50:3 180:15	52:18 53:1		47 136:2
81:5 132:16	2023 183:19	53:14,21	3	48 114:6
15222 8:18	2024 90:2	54:10,22	3 4:15 5:13	49 5:9
16 6:8 180:11	101:12	55:16 56:13	15:19,22	
161 182:19	129:12 130:5	58:10,15,19	16:21 89:17	5
17 6:10 84:4	154:7,8	59:11,12,18	90:1 101:12	5 4:19 39:18
84:10 85:10	173:22	66:14 67:2,4	138:18	39:21 59:9
99:20 183:4	176:21 184:5	67:13 68:4	30 90:21 164:4	59:20 67:2
179 183:15	2024-00467	68:15,19	164:7 174:18	90:5
17th 3:17	7:8	70:15,19	174:19	5.5 62:17
18 38:12 134:1	2024-00563	71:2,5,10,14	3005 14:2,8	67:22
162:22	7:9	73:19 74:19	30363-6209	50 5:12 175:18
180 6:8 183:22	2024-467	75:5,11 76:8	3:18	175:21
183 6:10	11:15 12:10	77:5,6,11	31 13:19 18:14	51 13:13 92:17
1875 3:12	2024-563	85:1 86:7	32 146:20	102:2
19 5:17 111:9	42:17	95:6,9 96:20	147:18	52 93:8
134:2,5,5	2025 1:17 2:6	97:4,8,12,20	33 151:2	53 93:7
193 101:13	4:14 6:3 7:10	98:7,16	152:21	54 138:15
	13:19 16:5	99:18 100:4	35 171:8	55 138:18
2	27:7 43:18	100:19	36.5 171:17	563 43:3 50:16
2 4:14,14 14:1	113:18	113:16 116:1	175:8	571.203.2700
14:4,14 25:4	171:16	116:9 119:12	4	3:14
20 4:18 60:11	172:14 174:8	125:1 129:4	4 1:17 2:6 4:18	58 6:3 113:5
78:16 80:11	175:2 188:20	141:17 142:4	7:10 19:21	113:15
92:18	2025-02-25	142:14,22	20:1 32:3	59 13:8,11
2007 162:13	113:4	149:15 150:2	40 4:19 164:4	6
2011 162:12	2072 171:21	156:2 159:13	166:11	6 5:3 42:11
2016-1127	2084 132:15	159:19	174:19	44:2,19
132:20	132:19 133:3	173:14 181:2	401 89:2 101:4	130:19
2017 6:7 131:4	21 81:8 82:3	181:14,18	111:15 133:7	188:20
132:5 133:1	212.813.8800	182:4 183:9	402 89:2 101:4	6,294,553
137:13	3:7	185:2,12,17	111:15 133:7	142:16
2018 154:7	22 60:9 183:21	186:11	403 89:2 101:4	6.5 62:17
176:21 184:4	2229 183:3	25 6:3 16:4,20	111:15 133:7	67:22
2019-1313	23 67:7 93:11	43:17 93:6	404.653.6400	60 43:6
116:14	245 11:20	113:18 136:2	3:18	600 12:21 13:1
20190-6023	12:20 13:1	136:4 170:13	42 5:3	15:8 34:16
3:13	15:7,20	26 90:2 142:7	420 8:17	42:10 43:12
2020 129:11	17:15 18:9	144:15	43 5:5	46:1,17,21
130:5	19:22 34:16	27 144:16	46 5:8 135:21	47:2,8,11
2021 5:18	39:20 41:2	182:20	171:7	50:8 51:6,14
35:12 111:9	44:15 46:2	183:16	467 14:7 16:4	52:18 53:2
2022 154:11	47:8,10 50:8	271 3:17	20:11 113:16	53:14,22

54:11,21	96:21 97:3,6			
55:15 56:12	114:18 116:2			
58:10,16,20	149:9,11			
60:6,9,18	163:21			
61:15 62:1	180:16 181:3			
62:14 66:15	181:7,19			
70:15,21	182:3,11,19			
71:3,6,11,15	184:9,11,15			
73:18 74:20	185:1			
75:12 76:7	77 177:17			
77:5,9,12				
96:20 97:3,7	8			
97:12 98:8	8 4:5 5:8 46:11			
119:13 125:2	46:14			
129:3 141:18	8,293,742 5:12			
149:15 150:1	49:10 50:17			
156:3 159:12	800 3:13			
159:19	836 91:1			
173:15 181:2	858 93:12			
181:15,18	89 5:13			
182:4 183:13				
185:3,18	9			
186:12	9 5:9 48:20			
61 13:13	49:1			
620 3:6	9:01 2:6 7:11			
67 116:4,8	9:57 59:4			
	9764 188:18			
7				
7 5:5 43:11,14				
73 116:4,8				
74 5:17 111:8				
116:14,22				
742 34:18 48:8				
48:13,17				
51:9,12,14				
52:4,18				
56:19 57:3				
57:13 58:12				
59:11,13				
60:12,19				
61:16,22				
64:11 68:5				
68:16 69:3				
70:17,20,21				