Filed on behalf of: Serendia, LLC

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ENDYMED MEDICAL LTD. AND ENDYMED MEDICAL, INC.,
Petitioner,

v.

SERENDIA, LLC,
Patent Owner.

Case IPR2024-00844
Patent 9,320,536

DECLARATION OF VINCE THOMAS
IN SUPPORT OF
PATENT OWNER'S PRELIMINARY RESPONSE

PUBLIC VERSION - REDACTED

Serendia, LLC
Exhibit 2135
EndyMed v.Serendia
IPR2024-00844

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I. Introduction and Qualifications

1. I have been retained by Serendia, LLC ("Patent Owner") to provide my opinion concerning objective indicia of non-obviousness relating to the validity of U.S. Patent No. 9,320,536 (Ex. 1001). Specifically, I have been asked to address whether the products that practice the inventions claimed in the '536 Patent have experienced commercial success. In my opinion, based on the amount and growth of sales of those products, they have experienced commercial success.

2. I am a Senior Managing Director for FTI Consulting, Inc. ("FTI"), an international financial advisory and consulting firm. I lead FTI's National Intellectual Property Practice, am the Leader of FTI's Dispute Advisory Services Practice, and serve on the Forensic & Litigation Consulting's Executive Leadership Team. Before joining FTI, I was a partner with the international professional services firm, KPMG, LLP.

3. Over my career I have analyzed economic and financial issues in more than one hundred commercial disputes, many of which involved patent, copyright, trade secret, and trademark infringement. Many of those assignments have also involved complex studies of damages and cost accounting related thereto, inventory analyses, and determinations of domestic industry and appropriate remedies in ITC investigations.

4. I am Certified in Financial Forensics ("CFF"), Accredited in Business Valuation ("ABV"), a Certified Public Accountant ("CPA"), and a Certified Valuation Analyst ("CVA"). I have advised several clients and counsel on sophisticated valuation issues involving asset transfers and various types of intellectual property. I also have significant experience in corporate, financial, and accounting management positions, including Analyst and Director as well as Chief Financial Officer for a high-tech company where I was responsible for managing its intellectual property portfolio. In that capacity, as well as during my consulting career, I have been involved in license negotiations, performing royalty analysis, valuing intellectual property, opining on domestic industry and remedies-related issues in ITC investigations, and reviewing and analyzing license agreements.

5. I graduated Cum Laude from DePauw University with a Bachelor of Arts degree in Economics and subsequently received a Masters of Business Administration degree from Indiana University. I am also a member of the American Institute of Certified Public Accountants and National Association of Certified Valuation Analysts.

6. My resume is attached as Ex. 2070.

II. Summary of Materials Reviewed And Considered

7. All of the opinions contained in this Declaration are based on the documents I reviewed and my knowledge and professional judgment. In forming the opinions expressed in this Declaration, while drawing on my experience, I reviewed the following documents:

Ex.	Description
1001	U.S. Patent No. 9,320,536
2016	Complainant's Public Interest Statement & Complaint of Serendia
2070	Curriculum Vitae of Vincent A. Thomas
2071	2023 Q1 Detailed Revenues [redacted]
2147	Declaration of Peter Crosby in Support of Patent Owner's Preliminary Response

III. Legal Standards

8. I am not an attorney, and counsel for Patent Owner has instructed me as to the applicable legal standards relevant to my analysis in this declaration.

9. I understand that the United States Supreme Court acknowledged the importance of commercial success issues in the context of questions of 35 U.S.C. § 103 in *Graham v. John Deere Co. of Kansas City*:

> Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.

10. I also understand that the United States Court of Appeals for the Federal Circuit provided additional guidance regarding the analysis of commercial success issues in *Demaco Corp. v. F. Von Langsdorff Licensing Ltd*:

> When a patentee asserts that commercial success supports its contention of non-obviousness, there must of course be a sufficient relationship between the commercial success and the patented invention. The term "nexus" is often used, in this context, to designate a legally and factually sufficient connection between the proven success and the patented invention, such that the objective evidence should be considered in the determination of nonobviousness.

IV. Relevant Background

11. I served as expert in the related International Trade Commission investigation between Patent Owner on the one hand and Ilooda and Jeisys (the Petitioners) amongst others on the other hand (hereinafter "the 1356 Investigation"). In the 1356 Investigation, Patent Owner asserted a number of patents, including the '536 Patent, and relied on the Sylfirm X [redacted] to establish a domestic industry (a requirement in International Trade Commission investigations). Based on my involvement in the 1356 Investigation, I understand that none of the other parties to the 1356 Investigation (including the Petitioners here) presented any evidence rebutting that the Sylfirm X practices the '536 Patent.

12. I understand that the '536 Patent issued on April 26, 2016 and that it issued from Application No. 13/825,083, filed on February 22, 2012.[1] I also understand that the claims of the '536 Patent at issue generally relate to methods and apparatuses for treating dermatological tissue with a user holdable device that can be releasably coupled to a needle assembly, where a motor can extend the needles into the skin while maintaining electrical contact so that an electrical signal can be applied to the needles. Ex. 1001 ('536 Patent); Ex. 2016 (Complaint), p. 18.

13. I understand that the claims of the '536 Patent at issue relate to the concept of microneedles being inserted into dermatological tissue at a certain depth and applying energy to the dermatological tissue through the needles, which I understand coagulates the tissue. Ex. 2147 (Crosby Decl.).

V. Commercial Success of the Patented Invention

14. I understand that needle depth control as claimed in the '536 Patent is one of the features of the Sylfirm X products and that [redacted] Ex. 2147 (Crosby Decl.).

[1] Ex. 1001 ('536 Patent).

15. I understand that the Sylfirm X was first commercially available in the United States in 2021. From January 2021 through March of 2023, U.S. sales of the Sylfirm X totaled [redacted] In my opinion, the amount and growth of sales for the Sylfirm X supports that they have been commercially successful.

VI. Conclusion

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 13, 2024, in New York, New York.

Vincent A. Thomas