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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
SARTORIUS BIOANALYTICAL
INSTRUMENTS, INC.,
PLAINTIFF,
VS.
GATOR BIO, INC., AND HONG TAN,
DEFENDANTS.
CASE NO. CV-22-01417 EJD
SAN JOSE, CALIFORNIA
MAY 1, 2025
PAGES 1-50

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: BLANK ROME LLP
BY: CHERYL S. CHANG
2029 CENTURY PARK EAST, SIXTH FLOOR
LOS ANGELES, CALIFORNIA 90067
BY: BENJAMIN R. REYES
DIPU A. DOSHI
1825 EYE ST., NW
WASHINGTON, DC 20006

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER.

1 A P P E A R A N C E S: (CONT'D)

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FOR THE DEFENDANTS:

PERKINS COIE LLP

BY: HESSAM GHARAVIRAM

3150 PORTER DRIVE

PALO ALTO, CALIFORNIA 94304

BY: HARI SANTHANAM

110 NORTH WACKER DRIVE

SUITE 3400

CHICAGO, ILLINOIS 60606

ALSO PRESENT:

HONG TAN

ROBERT ZUK

SAN JOSE, CALIFORNIA

MAY 1, 2025

P R O C E E D I N G S

(COURT CONVENED AT 9:07 A.M.)

THE COURT: WE'LL CALL OUR MORNING CALENDAR.

LET'S SEE. AS YOU SEE, WE HAVE A COUPLE OF MATTERS ON OR
9:00 O'CLOCK CALENDAR, AND THEN WE HAVE A 10:00 O'CLOCK
CALENDAR. WE PUSHED OUR 10:00 O'CLOCK CALENDAR BACK A LITTLE
BIT TO ALLOW SOME TIME FOR BOTH MATTERS THIS MORNING.

BUT I TELL YOU THAT JUST TO SUGGEST, NOT BREVITY, BUT TO
BE ABLE TO EFFICIENTLY PROCESS YOUR PRESENTATIONS. THAT WOULD
BE HELPFUL.

LET'S START WITH 22-1417, THE PATENT CASE, SARTORIUS
VERSUS GATOR BIO.

IF THOSE PARTIES COULD COME FORWARD, PLEASE.

IF I COULD HAVE THE APPEARANCE OF COUNSEL, PLEASE.

MS. CHANG: GOOD MORNING, YOUR HONOR.

CHERYL CHANG OF BLAKE ROME ON BEHALF OF PLAINTIFF
SARTORIUS.

AND WITH ME ARE MY COLLEAGUES, DIPU DOSHI AND
BENJAMIN REYES.

THE COURT: THANK YOU.

MR. REYES: TAKING YOUR HONOR'S STANDING ORDERS
SERIOUSLY, WE ARE HAVING BENJAMIN REYES ARGUE FOR US TODAY.

THE COURT: GREAT. THANK YOU VERY MUCH. THANK YOU.

09:08AM 1 MR. SANTHANAM: THIS IS HARI SANTHANAM FROM
09:08AM 2 PERKINS COIE ON BEHALF OF THE DEFENDANTS.
09:08AM 3 I HAVE WITH ME MY COLLEAGUE, HESSAM GHARAVIRAM.
09:08AM 4 AND I WILL ALSO NOTE ON THE RECORD THAT WE HAVE OUR CLIENT
09:09AM 5 HERE, HONG TAN, THE CEO OF GATOR BIO; AND ROBERT ZUK, WHO IS
09:09AM 6 THE CHIEF TECHNICAL OFFICER.
09:09AM 7 THE COURT: GREAT. WELCOME EVERYONE. THANK YOU.
09:09AM 8 AND THIS IS A MOTION TO DISMISS.
09:09AM 9 SO I'M HAPPY TO HEAR FROM THE MOVING PARTY FIRST, PLEASE.
09:09AM 10 MR. SANTHANAM: LET ME SWITCH OVER HERE. I
09:09AM 11 UNDERSTAND THERE'S A CABLE.
09:09AM 12 THE CLERK: IT REACHES TO BOTH SIDES.
09:09AM 13 MR. SANTHANAM: OKAY.
09:09AM 14 SO, YOUR HONOR, WE HAD SUBMITTED SOME SLIDES BEFORE THE
09:09AM 15 HEARING, AND SO I'M GOING TO BE REFERRING TO THOSE
09:09AM 16 DEMONSTRATIVE SLIDES.
09:09AM 17 I'LL START OFF WHERE I THINK IT MIGHT BE HELPFUL FOR THE
09:10AM 18 COURT BEFORE I JUMP INTO THE MOTIONS, MAYBE TALK A LITTLE BIT
09:10AM 19 ABOUT THE CONTEXT OF THE PROCEDURAL POSTURE OF THIS CASE.
09:10AM 20 THERE ARE FOUR PATENTS THAT ARE ASSERTED IN THE SECOND
09:10AM 21 AMENDED COMPLAINT. THREE OF THOSE PATENTS HAVE ALREADY BEEN
09:10AM 22 LITIGATED IN THIS PARALLEL INTERNATIONAL TRADE COMMISSION CASE
09:10AM 23 BETWEEN THE SAME PARTIES.
09:10AM 24 AND DURING THAT ITC PROCEEDING, THE PLAINTIFF TOOK
09:10AM 25 DISCOVERY OF ALL THREE OF THOSE PATENTS, FULL FACT AND EXPERT

DISCOVERY. THEY ASSERTED A NUMBER OF CLAIMS FROM ALL OF THE PATENTS.

ULTIMATELY, THEY WITHDREW ALL CLAIMS EXCEPT ONE, WHICH WAS CLAIM 8 OF THE '887 PATENT.

WE TRIED THAT CLAIM BEFORE THE ADMINISTRATIVE LAW JUDGE. THE JUDGE FOUND THAT GATOR BIO DID NOT INFRINGE. THE COMMISSION AFFIRMED, AND SARTORIUS, THE PLAINTIFF, DID NOT APPEAL THAT DETERMINATION.

SO AS WE COME BACK TO THIS COURT, AS WE'VE EXPLAINED IN OUR PAPERS, THE WAY WE SEE IT IS THAT SARTORIUS IS TRYING TO RELITIGATE THOSE THREE PATENTS, AND THOSE ARE THE THREE PATENTS THAT WE PRINCIPALLY FOCUS ON IN OUR MOTION.

YOUR HONOR MIGHT BE WONDERING WHAT IS GOING ON WITH THE FOURTH PATENT, AND I WILL JUST BRIEFLY MENTION THAT IT WAS A PATENT THAT THEY ADDED IN THEIR SECOND AMENDED COMPLAINT.

WE HAVE FILED AN IPR PETITION CHALLENGING THAT PATENT AT THE PATENT TRIAL AND APPEAL BOARD. WE ANTICIPATE THERE WILL BE A DECISION ON INSTITUTION COME OCTOBER, OCTOBER 14TH.

THE COURT: THANK YOU. IS THAT THE '588?

MR. SANTHANAM: THAT IS THE '588.

THE COURT: SO WE'RE GOING TO TALK ABOUT '585, '547, AND '887.

MR. SANTHANAM: THAT IS EXACTLY RIGHT.

THE COURT: THANK YOU.

MR. SANTHANAM: SO WITH RESPECT TO THOSE PATENTS, I

09:11AM 1 THINK WHAT WOULD BE HELPFUL IS TO TALK A LITTLE BRIEFLY ABOUT
09:11AM 2 WHAT PRODUCTS ARE AT ISSUE HERE, AND I'M REFERRING TO SLIDE 3
09:11AM 3 OF OUR DEMONSTRATIVES.

09:11AM 4 WE HAVE PICTURES HERE THAT ARE TAKEN RIGHT OUT OF THE
09:11AM 5 SECOND AMENDED COMPLAINT. IT'S FROM PARAGRAPHS 51 TO 52 AND
09:12AM 6 69.

09:12AM 7 ON THE FAR LEFT IS AN EXAMPLE OF A GATOR BIO INSTRUMENT.
09:12AM 8 THIS PARTICULAR ONE IS CALLED A GATOR PRIME INSTRUMENT, AND IT
09:12AM 9 HAS ITS COVER ON.

09:12AM 10 IN THE MIDDLE IS AN EXAMPLE OF THAT INSTRUMENT WITH THE
09:12AM 11 COVER TAKEN OFF SO YOU CAN SEE THE INTERNAL COMPONENTS, AND ON
09:12AM 12 THE FAR RIGHT IS AN EXAMPLE OF A SINGLE GATOR BIO OPTICAL FIBER
09:12AM 13 PROBE.

09:12AM 14 THE COURT: THESE PROBES LOOK LIKE THEY WOULD BE IN
09:12AM 15 THAT GREEN RACK BELOW THAT --

09:12AM 16 MR. SANTHANAM: THAT IS EXACTLY RIGHT, YOUR HONOR.
09:12AM 17 THAT'S PRECISELY RIGHT.

09:12AM 18 SO THE PROBES COME IN A RACK FORM, AND YOU CAN SEE THAT IN
09:12AM 19 THE IMAGE IN THE MIDDLE, THAT RACK OR TRAY IS PLACED ON A
09:12AM 20 PLATFORM IN THE INSTRUMENT, AND DURING THE OPERATION OF THE
09:12AM 21 INSTRUMENT, THE INSTRUMENT WILL PICK UP A NUMBER OF THESE
09:12AM 22 PROBES, AND THEN DIP THEM INTO SAMPLES, AND THAT'S HOW THE
09:12AM 23 SAMPLES ARE STUDIED.

09:12AM 24 THE COURT: I SEE.

09:12AM 25 MR. SANTHANAM: AND JUST AS A LITTLE BIT OF CONTEXT

09:12AM 1 ON THE PROBES THEMSELVES, IF YOU LOOK OVER TO THE RIGHT, YOU
09:13AM 2 CAN SEE THAT THE PROBES ARE BASICALLY SHORT SEGMENTS OF OPTICAL
09:13AM 3 FIBER, GLASS OPTICAL FIBER, WITH A SILICON RING AROUND THEM.

09:13AM 4 AND PRETTY MUCH ALL YOU SEE HERE IS THE OPTICAL FIBER, BUT
09:13AM 5 THERE IS A COATING ON THE VERY END, THE BOTTOM END, WE CALL
09:13AM 6 THAT THE DISTAL END OF THE PROBE, THERE IS A COATING ON THERE
09:13AM 7 THAT YOU CAN'T SEE IT WITH THE NAKED EYE, IT'S ON THE NANOMETER
09:13AM 8 SCALE, BUT IT HAS THESE THINGS THAT SARTORIUS REFERS TO AS
09:13AM 9 REFLECTING SURFACES, IT HAS SURFACE CHEMISTRY THAT ALLOWS IT TO
09:13AM 10 INTERACT WITH MOLECULES IN A SAMPLE.

09:13AM 11 SO THAT IS HOW THESE INSTRUMENTS FUNCTION TOGETHER.
09:13AM 12 THEY'RE PUT IN A RACK OR A TRAY. THEY'RE PICKED UP BY THE
09:13AM 13 INSTRUMENT, AND THEN DIPPED INTO SAMPLES.

09:13AM 14 SO WITH THAT CONTEXT IN MIND, I'D LIKE TO TURN TO THE
09:13AM 15 FIRST SUBSTANTIVE ARGUMENT THAT WE MAKE, WHICH IS THAT
09:13AM 16 SARTORIUS HAS MADE ARGUMENTS IN THE IPR OF THIS '585 PATENT
09:13AM 17 THAT WE CONTEND AMOUNT TO A DISCLAIMER THAT PRECLUDES ANY
09:14AM 18 ASSERTION OF INFRINGEMENT AS TO THAT PATENT.

09:14AM 19 AND WE'LL BEGIN -- THIS IS ON SLIDE 5. VERY BRIEFLY, I
09:14AM 20 WANTED TO HIGHLIGHT A COUPLE OF CASES THAT WE CITED IN THE CASE
09:14AM 21 LAW. THE FIRST IS THE FEDERAL CIRCUIT'S DECISION IN AYLUS.
09:14AM 22 AND THAT CASE STANDS FOR THE PROPOSITION THAT A PATENT OWNER'S
09:14AM 23 STATEMENTS IN AN IPR PROCEEDING, WHETHER BEFORE INSTITUTION OR
09:14AM 24 AFTER INSTITUTION, CAN AMOUNT TO A PROSECUTION DISCLAIMER.

09:14AM 25 SO IF A PATENT OWNER SAYS CERTAIN THINGS AND SAYS THAT OUR

CLAIMS DO NOT COVER A CERTAIN ARRANGEMENT IN AN IPR PROCEEDING TO OVERCOME THE PRIOR ART, THEY CANNOT THEN TURN AROUND AND SAY IN DISTRICT COURT, IN A DISTRICT COURT, THAT THE SAME ARRANGEMENT INFRINGES.

AND THE CASES AT THE BOTTOM I WOULD HIGHLIGHT, THERE'S THE GRECIA CASE, BUT OTHER CASES ALSO INCLUDE THE SEMICONDUCTOR CASE AND THE ALMIRALL, A-L-M-I-R-A-L-L, CASE.

ALL THREE OF THOSE CASES STAND FOR THE PROPOSITION THAT IT IS ENTIRELY APPROPRIATE FOR A DISTRICT COURT AT THE PLEADING STAGE ON A RULE 12(B)(6) MOTION TO CONSIDER PROSECUTION DISCLAIMER AND DISMISS INFRINGEMENT CLAIMS. AND BOTH OF THESE PROPOSITIONS, NEITHER OF THEM ARE IN DISPUTE.

SO WHY IS THERE DISCLAIMER HERE? I'LL START WITH THE '585 PATENT. AND WE HAVE HERE ON SLIDE 6, THIS IS THE EXHIBIT C TO THE SECOND AMENDED COMPLAINT, IT'S THE '585 PATENT, AND WE HAVE A CUTOUT OF CLAIM 1.

AND WE HAVE HIGHLIGHTED ONE ELEMENT HERE, WHICH THE PARTIES HAVE REFERRED TO IN THEIR BRIEFING AS THE REMOVABLE ATTACHMENT LIMITATION OR REMOVABLY ATTACHED LIMITATION, AND IT SAYS AN OPTICAL ELEMENT REMOVABLY ATTACHED TO THE TIP OF THE OPTICAL FIBER.

AND THIS WAS A LIMITATION, AMONG OTHERS, THAT WERE FRONT AND CENTER IN THE '585 IPR.

SARTORIUS MADE A NUMBER OF ARGUMENTS THAT WE BELIEVE AND WE CONTEND FORM A DISCLAIMER.

09:16AM 1 AND SO IF WE TURN TO SLIDE 7, WE HAVE HERE EXCERPTS OF THE
09:16AM 2 IPR RECORD, AND SPECIFICALLY EXHIBIT 6, WHICH HAS FIGURE 3 OF
09:16AM 3 THE SUN REFERENCE, THAT WAS ONE OF THE PRIOR ART REFERENCES
09:16AM 4 THAT WAS AT ISSUE, AND WE ALSO HAVE EXCERPTS OF SARTORIUS'S
09:16AM 5 STATEMENTS IN THAT IPR THAT COMES OUT OF EXHIBIT 4, PAGES 50
09:16AM 6 AND 53.

09:16AM 7 SO TURNING TO THE SUN REFERENCE, WHICH IS ON THE LEFT,
09:16AM 8 REALLY ALL THE COURT NEEDS TO UNDERSTAND ABOUT THIS SUN
09:16AM 9 REFERENCE IS IF YOU LOOK AT THE DIAGRAM, THERE'S A LIGHT
09:16AM 10 SOURCE. IT DESCRIBES A LIGHT SOURCE AND LIGHT TRAVELS THROUGH
09:16AM 11 AN OPTICAL FIBER, THEY CALL IT A Y TYPE OR Y SHAPED OPTICAL
09:16AM 12 FIBER, AND THE TERMINAL END OF THAT FIBER IS INSERTED INTO A
09:16AM 13 COUPLING POINT, AND THAT'S SHADED HERE IN RED. IT'S REFERRED
09:16AM 14 TO AS SMA CONNECTOR, AND IT IS A STANDARD FIBER-OPTIC
09:17AM 15 CONNECTOR.

09:17AM 16 AND THEN COMING OUT OF THE OTHER END OF THAT CONNECTOR IS
09:17AM 17 AN OPTICAL FIBER PROBE. IT'S A SHORT SEGMENT OF OPTICAL FIBER,
09:17AM 18 WITH THE COATING ON THE END WITH THE REFLECTING SURFACES, THE
09:17AM 19 SURFACE CHEMISTRY THAT BINDS MOLECULES, ET CETERA.

09:17AM 20 SO IN THE IPR GATOR BIO ARGUED THAT THE REMOVABLY ATTACHED
09:17AM 21 LIMITATION WAS MET HERE, AND WE POINTED TO THE DISTAL END OR
09:17AM 22 TERMINAL END OF THIS Y SHAPED FIBER THAT IS INSERTED INTO THE
09:17AM 23 COUPLING AT THE TOP. WE SAID THAT IS THE TIP OF THE OPTICAL
09:17AM 24 FIBER.

09:17AM 25 AND WE SAID THE OPTICAL ELEMENT IS THIS FIBER PROBE THAT

09:17AM 1 IS REMOVABLY ATTACHED ON THE OTHER END OF THIS COUPLING. AND
09:17AM 2 WE SAID THAT THE REMOVABLY ATTACHED ELEMENT WAS MET.

09:17AM 3 SO SARTORIUS DISCLAIMED THIS ARRANGEMENT. THEY SAID THIS
09:17AM 4 IS NOT MET, AND THEY CONVINCED THE PATENT TRIAL AND APPEAL
09:17AM 5 BOARD TO DENY INSTITUTION OF THE IPR. AND WHAT THEIR ARGUMENT
09:17AM 6 WAS, IS THAT THEY SAID, WELL, IF YOU LOOK AT THIS COUPLING
09:18AM 7 POINT, IT'S REALLY JUST ONE LONG OPTICAL FIBER WITH A BREAK IN
09:18AM 8 THE MIDDLE. THE BLUE OPTICAL FIBER GOES IN AND A BLUE OPTICAL
09:18AM 9 FIBER THAT IS A PROBE COMES OUT.

09:18AM 10 AND THEY SAID THAT THE TIP OF THIS ONE LONG FIBER IS AT
09:18AM 11 THE VERY END OF THAT PROBE, AND THAT IS WHERE YOU HAVE THIS
09:18AM 12 COATING, YOU KNOW, THE REFLECTING SURFACES, THE ANALOG BINDING
09:18AM 13 MOLECULES, THOSE ARE ALL COATED AND THEY'RE NOT REMOVABLY
09:18AM 14 ATTACHED AT THE VERY END OF THIS FIBER. THAT WAS THEIR
09:18AM 15 ARGUMENT, AND THEY SAID THIS IS DISCLAIMED.

09:18AM 16 AND THEY EVEN MATCH THIS UP -- IF WE GO TO THE NEXT SLIDE.
09:18AM 17 THIS IS TAKEN OUT OF SARTORIUS'S RESPONSE AT PAGE 54, THEY EVEN
09:18AM 18 MATCH THIS UP SIDE BY SIDE. THEY PUT THE PRIOR ART ON ONE END,
09:18AM 19 ONE HALF, AND THEY PUT THE FIGURE 2 UNCLAIMED EMBODIMENT OF THE
09:18AM 20 '585 PATENT ON THE OTHER SIDE, AND THEY SAID BOTH OF THESE HAVE
09:18AM 21 OPTICAL FIBER WITH A COATING ON THE END THAT IS NOT REMOVABLY
09:18AM 22 ATTACHED AND THEY SAID THIS IS DISCLAIMED.

09:18AM 23 AND THE PROBLEM THEY RUN INTO HERE NOW IS THAT THAT IS
09:18AM 24 PRECISELY WHAT THEY ARE ACCUSING US OF INFRINGING. AND WE CAN
09:19AM 25 SEE THAT IF WE GO TO SLIDE 9, WE HAVE A SIDE-BY-SIDE-BY-SIDE

09:19AM 1 COMPARISON OF THE ACCUSED GATOR BIO AND FIBEROPTIC PROBES, THE
09:19AM 2 SUN PROBE, WHICH WAS THE PRIOR ART IN THE IPR, AND THE FIGURE 2
09:19AM 3 EMBODIMENT THAT THEY SAID WAS UNCLAIMED.

09:19AM 4 ALL OF THEM HAVE OPTICAL FIBER AND COATED ON THE VERY
09:19AM 5 DISTAL END OF IT IS THIS NANOMETER SCALE COATING WITH
09:19AM 6 REFLECTING SURFACES AND BINDING AND SURFACE CHEMISTRY THAT
09:19AM 7 BINDS ANALOG.

09:19AM 8 EXACT SAME ARRANGEMENT. AND IF YOU WANT TO LOOK AT HOW
09:19AM 9 THAT LOOKS WHEN IT'S IN THE INSTRUMENT, WE HAVE ON SLIDE 10 A
09:19AM 10 SIDE-BY-SIDE COMPARISON OF THE SUN PRIOR ART WITH THE PICTURE
09:19AM 11 TAKEN OUT OF THE SECOND AMENDED COMPLAINT, WHICH WE KIND OF
09:19AM 12 MARKED UP TO SHOW THE SIDE-BY-SIDE COMPARISON.

09:19AM 13 SO IN BOTH OF THEM YOU HAVE OPTICAL FIBER, IT'S ALL IN
09:20AM 14 BLUE, THE OPTICAL FIBER IS IN BLUE. YOU HAVE OPTICAL FIBER
09:20AM 15 COMING IN, AND THERE'S A RED MECHANICAL COUPLING, OR WHAT
09:20AM 16 THEY'RE CALLING A MECHANICAL COUPLING, AND THEN COMING OUT OF
09:20AM 17 IT IS AN OPTICAL FIBER PROBE.

09:20AM 18 SO IF YOU FOLLOW SARTORIUS'S LOGIC FROM THE IPR, IT'S ALL
09:20AM 19 JUST ONE LONG OPTICAL FIBER, THE FIBER GOES IN, INTERMEDIATE
09:20AM 20 BREAK, THE FIBER COMES OUT, AND THE OPTICAL ELEMENT, WHICH THEY
09:20AM 21 SAID HAS THESE REFLECTING SURFACES, THAT'S ADHERED DIRECTLY
09:20AM 22 COATED ON THE VERY DISTAL END OF THESE PROBES AT THE BOTTOM
09:20AM 23 THAT YOU CAN SEE THERE.

09:20AM 24 SO THE EXACT SAME ARRANGEMENT THAT THEY DISCLAIMED IN THE
09:20AM 25 IPR.

09:20AM 1 AND I'LL MAKE TWO OBSERVATIONS HERE. YOU KNOW, WE DID --
09:20AM 2 THE PARTIES EXCHANGED THEIR DEMONSTRATIVE SLIDES. WE FULLY
09:20AM 3 EXPECT SARTORIUS TO COME UP HERE AND POINT TO SOMETHING LIKE
09:20AM 4 THIS AND SAY, OH, WE'RE ASKING THE COURT TO MAKE ALL SORTS OF
09:21AM 5 FACTUAL FINDINGS AND FACTUAL DETERMINATIONS.

09:21AM 6 THAT IS FAR FROM THE CASE, YOUR HONOR. WHAT WE'RE ASKING
09:21AM 7 THE COURT IS TO HOLD SARTORIUS TO THE CLEAR AND UNAMBIGUOUS
09:21AM 8 STATEMENTS THAT THEY MADE IN THE IPR AND LINE THEM UP WITH
09:21AM 9 PRECISELY WHAT IS IN THE SECOND AMENDED COMPLAINT AND WHAT THEY
09:21AM 10 SAY ABOUT THE ACCUSED PRODUCTS.

09:21AM 11 THERE IS NO DISPUTE HERE, AND YOUR HONOR IS WELCOME TO ASK
09:21AM 12 THEM THAT WHAT GOES INTO THE MECHANICAL COUPLING IS OPTICAL
09:21AM 13 FIBER, WHAT COMES OUT OF IT IS THE OPTICAL FIBER PORTION OF THE
09:21AM 14 GATOR PROBES, AND THE REFLECTING SURFACES ARE ADHERED DIRECTLY
09:21AM 15 ON THE DISTAL END OF IT, THE EXACT SAME ARRANGEMENT.

09:21AM 16 NOW, IF THERE WAS ANY DOUBT ABOUT THAT, IF WE GO TO
09:21AM 17 SLIDE 11, WE HAVE AN EXCERPT HERE FROM THE ITC TRIAL
09:21AM 18 TRANSCRIPT. THIS IS SARTORIUS'S OWN EXPERT WHO IN CONNECTION
09:21AM 19 WITH AN ALMOST NEAR IDENTICAL PHOTOGRAPH ADMITTED ON THE RECORD
09:21AM 20 IN THE ITC ACTION THAT FIBER BUNDLES, OPTICAL FIBER GOES INTO
09:22AM 21 THE MECHANICAL COUPLING AND COMING OUT OF IT ARE THE GATOR
09:22AM 22 FIBER PORTION OF THE GATOR FIBER PROBES.

09:22AM 23 SO THERE CAN BE ABSOLUTELY NO DISPUTE ABOUT THESE
09:22AM 24 FUNDAMENTAL BASIC FACTS, AND IT'S CLEAR ON THE FACE IN THE
09:22AM 25 SECOND AMENDED COMPLAINT, AND YOU CAN TAKE THEIR EXPERT AT HIS

WORD AT THE ITC CASE WHERE HE TESTIFIED UNDER OATH.

NOW, THE OTHER ARGUMENT THAT I ANTICIPATE THAT THEY WILL MAKE, AND I'M GOING BACK TO SLIDE 7 HERE, IS THAT THEY MIGHT COME UP WITH SOME BRAND NEW ARGUMENT AS TO WHY THEY THINK THE SUN REFERENCE IS DISTINGUISHABLE.

AND I WILL POINT THE COURT BACK TO TWO CASES THAT WE CITE IN THE BRIEFING. NUMBER ONE IS THIS TECHNICAL PROPERTIES CASE AND THE SECOND IS THE TMC CASE. BOTH OF THEM ARE FEDERAL CIRCUIT CASES, AND THEY STAND FOR THE PROPOSITION THAT THE COURT MUST HOLD SARTORIUS TO THE ACTUAL ARGUMENTS THAT THEY MADE IN THE PTAB, NOT ARGUMENTS THAT THEY CAN COME UP WITH IN LITIGATION, NOT ARGUMENTS THAT THEY HAD WISHED THAT THEY HAD MADE, NOT EVEN ARGUMENTS THAT WERE MINIMALLY NECESSARY TO PREVAIL, BUT THE ACTUAL ARGUMENTS THEY MADE.

AND I THINK ON THIS SLIDE, SLIDE 7, EXHIBIT 4, PAGES 50 TO 53, THE THING I WILL POINT OUT IS THAT SARTORIUS ADMITTED ON THE RECORD IN THE IPR THAT THIS SMA CONNECTOR WAS A DETACHMENT POINT IN SUN. THAT'S RIGHT THERE IN THE MIDDLE OF THE BLOCKED QUOTE. THE DETACHMENT POINT IN SUN REPRESENTED BY THE SMA SPLICE BUSHING IN FIGURE 3. SO THEY REFER TO THAT AS A DETACHMENT POINT.

SO THERE WAS NO DISPUTE AS TO WHETHER OR NOT THIS RED SHADED COUPLING WAS A REMOVABLE POINT.

WHAT WAS THE ARGUMENT THAT THEY MADE WAS, WELL, IT DOESN'T MATTER IF IT'S REMOVABLE, IT'S JUST ONE LONG OPTICAL FIBER WITH

09:23AM 1 THE BREAK IN THE MIDDLE AND THE TIP IS AT THE VERY END OF THE
09:23AM 2 FIBER. THAT'S THE ARGUMENT THAT THEY MADE. THAT'S THE
09:23AM 3 ARGUMENT THAT THE COURT NEEDS TO HOLD THEM TO, AND IF THE COURT
09:23AM 4 DOES, THERE CANNOT BE ANY INFRINGEMENT OF THE '585 PATENT.

09:23AM 5 NOW, I WILL TURN QUICKLY TO THE OTHER TWO PATENTS, THE
09:23AM 6 '547 AND '887.

09:24AM 7 WE SUBMIT THAT THE DISCLAIMER AS TO THE '585 PATENT ALSO
09:24AM 8 APPLIES TO THE '547 AND '887 PATENTS, YOUR HONOR.

09:24AM 9 AND THE REASON FOR THAT, YOUR HONOR -- AND THIS COMES OUT
09:24AM 10 OF THE MALVERN CASE THAT WE CITE. BASICALLY THE
09:24AM 11 FEDERAL CIRCUIT HAS SAID IF A PATENT IS RELATED TO ANOTHER,
09:24AM 12 EITHER THEY'RE IN THE SAME FAMILY OR IT'S INCORPORATED BY
09:24AM 13 REFERENCE, YOU CAN USE ONE PATENT TO READ AND INTERPRET THE
09:24AM 14 SECOND PATENT.

09:24AM 15 AND HERE ALL OF THE PATENTS ARE RELATED. THE '547 AND
09:24AM 16 '585, THEY'RE FROM THE SAME FAMILY. THEY SHARE THE EXACT SAME
09:24AM 17 PATENT SPECIFICATION, AND THE KICKER IS THAT SAME SPECIFICATION
09:24AM 18 IS INCORPORATED BY REFERENCE INTO THE '887 PATENT.

09:24AM 19 SO ALL THREE ARE RELATED. AND UNDER THE NINTH CIRCUIT'S
09:24AM 20 MALVERN CASE AND THAT LINE OF CASES, THESE ARE RELATED PATENTS
09:24AM 21 THAT YOU CAN CONSIDER TOGETHER.

09:24AM 22 AND THE REASON THAT THE DISCLAIMER EXTENDS TO THE '547 AND
09:24AM 23 '887 PATENTS, AND I'M ON SLIDE 14 HERE, IS THAT -- BECAUSE OF
09:25AM 24 THIS MECHANICAL COUPLING LIMITATION.

09:25AM 25 SO IF YOU LOOK AT THE '585 PATENT, THERE WAS THIS

09:40AM 1 IS, WELL, JUDGE, WHEN SOMEONE MAKES A STATEMENT, TAKES A
09:40AM 2 POSITION IN A SISTER COURT, THEY SHOULD BE HELD TO IT, AND THEY
09:41AM 3 SHOULDN'T BE ABLE TO DIVERGE OR SOMEHOW CHANGE THEIR THOUGHTS.
09:41AM 4 I THINK THAT'S WHAT YOUR COLLEAGUE OPPOSITE, THE POINT HE WAS
09:41AM 5 TRYING TO MAKE?

09:41AM 6 MR. REYES: YES. AND WE AGREE FULLY WITH THAT.
09:41AM 7 NONE OF THE POSITIONS WE RAISE HERE TODAY ARE GOING TO BE
09:41AM 8 CONTRADICTORY TO ANYTHING THAT HE RAISED FROM THE ITC.

09:41AM 9 WE'RE MERELY TRYING TO ILLUSTRATE TO THE COURT HOW IT
09:41AM 10 SUPPORTS THE REASONABLE INFERENCE THAT WE HAVE PLAUSIBLY STATED
09:41AM 11 A CLAIM, THE CLAIMS.

09:41AM 12 THE COURT: PLAUSIBILITY?

09:41AM 13 MR. REYES: YES, YOUR HONOR.

09:41AM 14 THE COURT: OKAY. OKAY.

09:41AM 15 MR. REYES: WHICH BRINGS US TO OUR FIRST SUBSTANTIVE
09:41AM 16 POINT, THAT THERE WAS NO CLEAR AND UNMISTAKABLE DISCLAIMER IN
09:41AM 17 THE IPR AND THE '585 PATENT.

09:41AM 18 NOW, OPPOSING COUNSEL POINTED TO THE CASE OF GRECIA ESTATE
09:41AM 19 HOLDINGS V. META PLATFORMS, AND IT'S INFORMATIVE FOR SHOWING
09:42AM 20 WHAT A CLEAR AND UNMISTAKABLE DISCLAIMER REQUIRED, WHAT THAT
09:42AM 21 CASE LOOKS LIKE. IN THAT CASE, GRECIA ESTATE HOLDINGS IN THEIR
09:42AM 22 IPR SAID THAT CREDIT CARD INFORMATION CANNOT BE A MEMBERSHIP
09:42AM 23 VERIFICATION TOKEN.

09:42AM 24 AND THEN GRECIA ESTATE HOLDINGS TURNED IN THE DISTRICT
09:42AM 25 COURT PROCEEDINGS AND SAID, OH, PAY PAL INFORMATION, DEBIT CARD

09:42AM 1 AND CREDIT CARD INFORMATION CAN -- IS THE CLAIMED MEMBERSHIP
09:42AM 2 TOKEN VERIFICATION. THAT KIND OF CLEAR UNEQUIVOCATED STATEMENT
09:42AM 3 IS THE -- WHAT A CLEAR AND UNAMBIGUOUS DISCLAIMER LOOKS LIKE.

09:42AM 4 AND SARTORIUS MADE NO SUCH DISCLAIMER IN THE IPR
09:42AM 5 PROCEEDINGS.

09:42AM 6 AS OPPOSING COUNSEL, AND DEFENSE DON'T DISPUTE, THAT ONE
09:42AM 7 OF THE CONTESTED TERMS IN THE IPR WAS "REMOVABLY ATTACHED" AND
09:43AM 8 IT WAS PART OF THE CLAIM LANGUAGE, "AN OPTICAL ELEMENT
09:43AM 9 REMOVABLY ATTACHED TO THE TIP OF THE OPTICAL FIBER."

09:43AM 10 AND PROCEEDING TO SLIDE 4 -- I'M SORRY. THAT WAS SLIDE 3
09:43AM 11 SHOWING THE CLAIM LANGUAGE OF THE '585 PATENT. AND PROCEEDING
09:43AM 12 TO SLIDE 4, WHICH IS AN EXCERPT FROM THE SUN REFERENCE THAT
09:43AM 13 OPPOSING COUNSEL REFERENCED.

09:43AM 14 THE ARGUMENTS OVER THE SUN REFERENCE WERE A DEBATE ON
09:43AM 15 WHETHER OR NOT THE SUN REFERENCE WAS SHOWING THE OPTICAL
09:43AM 16 ELEMENT.

09:43AM 17 AS YOU CAN SEE FROM THE DEPICTION HERE, AND AS OPPOSING
09:43AM 18 COUNSEL EXPLAINED, THERE IS AN OPTICAL FIBER, WHAT IS CLEARLY
09:43AM 19 LABELED AS AN OPTICAL FIBER THAT GOES INTO AN SMA CONNECTOR,
09:43AM 20 WHICH THEY PURPORTED WAS THE REMOVABLY ATTACHED PIECE.

09:43AM 21 AND THEN THE OPTICAL FIBER COMES OUT OF THE -- IT'S
09:43AM 22 OPTICAL FIBER THAT COMES OUT OF THE SMA CONNECTOR.

09:44AM 23 GOING TO SLIDE 5. THE ARGUMENTS RAISED IN THE ITC
09:44AM 24 PROCEEDING ARE THAT WHAT THE DEFENDANTS WERE ARGUING DID NOT
09:44AM 25 MAKE SENSE BASED ON THE LANGUAGE USED IN THE SUN REFERENCE THAT

09:44AM 1 THE -- OPPOSING COUNSEL FOCUSSED ON IT REQUIRES A COUPLING, BUT
09:44AM 2 WE WERE SAYING THE DEFENDANTS ARE FORCED TO CONTEND THAT THE
09:44AM 3 PORTION OF OPTICAL FIBER RUNNING OUT OF THE DISTAL END OF THE
09:44AM 4 SMA CONNECTOR IS IN FACT NO LONGER OPTICAL FIBER BUT IS INSTEAD
09:44AM 5 THE CLAIMED OPTICAL ELEMENT TO WHICH THE OPTICAL FIBER IS
09:44AM 6 COUPLED.

09:44AM 7 AND WE NOTED, THERE'S NO DISCLAIMER. WE'RE SAYING THAT
09:44AM 8 THIS ARGUMENT DOESN'T MAKE SENSE BECAUSE IT CONTRAVENES THE
09:44AM 9 LANGUAGE THAT THE INVENTORS USED IN -- OR THAT THE AUTHORS USED
09:44AM 10 IN THE SUN REFERENCE. THE APPLICANTS WOULD HAVE UNDERSTOOD THE
09:45AM 11 DIFFERENCE BETWEEN THE VARIOUS OPTICAL COMPONENTS IN THEIR
09:45AM 12 ASSEMBLY.

09:45AM 13 THE COURT: SO DID IT JUST CHANGE CHARACTERIZATION,
09:45AM 14 IS THAT WHAT YOU'RE SAYING? IT'S NO LONGER AN OPTICAL FIBER,
09:45AM 15 BUT IT'S NOW AN OPTICAL ELEMENT?

09:45AM 16 MR. REYES: WELL, THAT'S WHAT THE ARGUMENT -- THAT
09:45AM 17 IT IS NO LONGER -- THAT THE OPTICAL FIBER GOING IN -- THE
09:45AM 18 OPTICAL FIBER -- THAT IT WASN'T OPTICAL FIBER COMING OUT, IT
09:45AM 19 WAS THE OPTICAL ELEMENT.

09:45AM 20 AND WE'RE SAYING THAT THE ACTUAL LANGUAGE USED IN THE SUN
09:45AM 21 REFERENCE CONTRAVENES THAT CLAIM.

09:45AM 22 BUT THEN -- AND DEFENDANTS QUOTED THIS LANGUAGE, WE EVEN
09:45AM 23 ACKNOWLEDGE, EVEN IF, EVEN IF OPTICAL FIBER COULD BE AN OPTICAL
09:45AM 24 ELEMENT, THAT THE REMOVABLY ATTACHED FEATURE IS IN THE WRONG
09:45AM 25 PLACE.

09:45AM 1 AGAIN, IT'S NO DISCLAIMER. WE'RE JUST SAYING IT'S IN THE
09:45AM 2 WRONG PLACE. NO CLEAR AND UNEQUIVOCAL LANGUAGE LIKE CREDIT
09:45AM 3 CARD -- THE CREDIT CARD ACCOUNT INFORMATION CANNOT BE A
09:46AM 4 MEMBERSHIP VERIFICATION TOKEN.

09:46AM 5 WE'RE POINTING OUT THE INCONSISTENCIES IN THEIR ARGUMENT.
09:46AM 6 AND THAT'S NOT EVEN SAYING -- THE ACKNOWLEDGEMENT, THAT EVEN IF
09:46AM 7 IT IS FIBEROPTIC CABLE IT CANNOT BE -- I AM SORRY. EVEN IF
09:46AM 8 IT'S A FIBEROPTIC CABLE COULD BE AN OPTICAL ELEMENT, IT'S IN
09:46AM 9 THE WRONG PLACE.

09:46AM 10 NOWHERE WERE WE SAYING A FIBEROPTIC CABLE EVEN IF IT WERE
09:46AM 11 AN OPTICAL ELEMENT, IT CANNOT BE REMOVABLY ATTACHED. WE'RE
09:46AM 12 JUST SAYING IT IS IN THE WRONG PLACE HERE.

09:46AM 13 SO GOING TO -- TURNING TO SLIDE 6. THIS IS WHAT SARTORIUS
09:46AM 14 ALLEGES THE ELEMENTS OF THE ACCUSED DEVICES ARE, THAT YOU CAN
09:46AM 15 SEE AT THE TOP WHAT THIS IS IS A DEPICTION OF THE GATOR BIO
09:46AM 16 MACHINE, AND IT SHOWS OPTICAL FIBER THAT IS CONNECTED TO A
09:46AM 17 SENSOR HOUSING AND REGISTRATION PLATE, WHICH WE CLAIM IS THE
09:46AM 18 MECHANICAL COUPLING, AND THEN THE PROBES AT THE BOTTOM ARE --
09:47AM 19 WE ARE ASSERTING, WE ARE ALLEGING THE ENTIRE PROBE IS THE FIRST
09:47AM 20 OPTICAL ELEMENT.

09:47AM 21 NOW --

09:47AM 22 THE COURT: THE ENTIRE PROBE FROM TOP TO BOTTOM?

09:47AM 23 MR. REYES: YEAH, THAT ENTIRE PROBE ASSEMBLY, WHAT
09:47AM 24 HE DESCRIBED WITH THE SILICON RING, THAT THAT IS THE OPTICAL
09:47AM 25 ELEMENT.

09:47AM 1 AND I'LL GO FURTHER INTO THAT IN A SECOND, WHICH TIES INTO
09:47AM 2 WHY WE ARE ALLEGING -- WHY WE ARE SAYING THE DEFENDANTS ARE
09:47AM 3 TRYING TO -- HAVE THE COURT MAKE A FACT DETERMINATION, AN
09:47AM 4 INAPPROPRIATE FACT DETERMINATION AT THIS TIME.

09:47AM 5 THEY ARE SAYING THAT THE PROBE IS ACTUALLY OPTICAL FIBER.
09:47AM 6 MAKE A DETERMINATION THAT THE PROBE IS ACTUALLY OPTICAL FIBER.
09:47AM 7 AND THEIR ENTIRE DISCLAIMER ARGUMENT RELIES ON THAT, AND IT
09:47AM 8 WOULD BE TRUE BECAUSE THEY CLAIM THAT WE'VE SAID SOME SORT OF
09:47AM 9 FIBER-IN-FIBER-OUT RULE WHEN WE'RE REALLY JUST DESCRIBING HOW
09:47AM 10 THE SUN REFERENCE WORKS. THERE'S OPTICAL FIBER THAT COMES IN,
09:48AM 11 AND THERE'S OPTICAL FIBER THAT COMES OUT.

09:48AM 12 BUT THEIR ENTIRE DISCLAIMER ARGUMENT REQUIRES THAT THEIR
09:48AM 13 PROBE HAVE OPTICAL FIBER COMING OUT OF THE MECHANICAL ASSEMBLY
09:48AM 14 WHERE THE SENSOR HOUSING AND THE REGISTRATION PLATE.

09:48AM 15 WE SAY, ONE, WE'RE ALLEGING THAT THAT'S NOT THE CASE. THE
09:48AM 16 PROBE IS THE ENTIRE OPTICAL ELEMENT.

09:48AM 17 AND, TWO, WHEN YOU ACTUALLY EXAMINE WHAT THE DEVICE LOOKS
09:48AM 18 LIKE, THEIR ARGUMENT DOESN'T MAKE SENSE.

09:48AM 19 YOU CAN SEE HERE THE OPTICAL FIBER AND THE PROBE ARE
09:48AM 20 VISUALLY -- EVEN FROM A VISUAL STANDPOINT ARE DISTINCT.
09:48AM 21 DISTINCT AND SEPARATE FEATURES.

09:48AM 22 YOU CAN SEE THE OPTICAL FIBER, WHEN IT ENTERS THE SENSOR
09:48AM 23 HOUSING, IT ENDS IN THE TIP. THE TIPS ARE -- WE POINT TO THE
09:48AM 24 TIP IN THE DIAGRAM.

09:48AM 25 THE COURT: AND THAT'S NOT OPTICAL FIBER, THE TIP?

09:49AM 1 MR. REYES: IT'S THE END OF THE OPTICAL FIBER. SO
09:49AM 2 WHERE THE OPTICAL FIBER ENDS, IT ENDS IN A TIP, WHICH MATCHES
09:49AM 3 UP WITH THE CLAIM LANGUAGE.

09:49AM 4 THE COURT: SO -- PARDON ME. IT'S -- SHOULD WE --
09:49AM 5 HOW MUCH WEIGHT SHOULD WE GIVE TO WHAT THEY CALL THEIR PRODUCT?

09:49AM 6 MR. REYES: WELL, YOUR HONOR, AT THIS STAGE IT'S
09:49AM 7 BASED ON WHETHER, WHETHER -- HOW WE CHARACTERIZE IT, WHETHER
09:49AM 8 THAT IS PLAUSIBLE, WHETHER WE CAN REASONABLY INFER THAT,
09:49AM 9 REASONABLY INFER THAT IT'S THE ENTIRE PROBE IS OPTICAL ELEMENT.

09:49AM 10 THE DEFENDANTS ARE INCENTIVIZED TO CHARACTERIZE THEIR
09:49AM 11 OPTICAL PROBES AS OPTICAL FIBER, AND IN THEIR BRIEF THEY POINT
09:49AM 12 TO PARAGRAPHS 144 AND 55 OF OUR COMPLAINT AND SAY THAT WE SAY
09:49AM 13 THE PROBE IS FIBER, WHICH WE DON'T.

09:49AM 14 I MEAN, WE LOOK BACK AND NOWHERE IN THERE DO WE SAY FIBER.

09:50AM 15 BUT INTERESTINGLY, THEY ALSO CITE TO THE ITC DOCKET OR A
09:50AM 16 PORTION OF THE ITC WHERE THE PROBE IS DESCRIBED AS A MICRO
09:50AM 17 GLASS ROD, WHICH IS NOT OPTICAL FIBER.

09:50AM 18 THE COURT: IS THAT THE SAME THING AS OPTICAL FIBER?
09:50AM 19 IS IT SOMETHING ELSE?

09:50AM 20 MR. REYES: WE CLAIM IT IS DISTINCT.

09:50AM 21 THE COURT: YOU DON'T KNOW WHAT THEY'RE TALKING
09:50AM 22 ABOUT.

09:50AM 23 MR. REYES: YES, YOUR HONOR. AND THAT IS WHY IT
09:50AM 24 WILL REQUIRE DISCOVERY, AND IT'S A FACT DETERMINATION, ARE
09:50AM 25 THESE TWO DISTINCT THINGS? ARE THE PROBES ACTUALLY OPTICAL

09:50AM 1 FIBER?

09:50AM 2 AND WE POSIT IT WOULD BE INAPPROPRIATE TO MAKE A
09:50AM 3 DETERMINATION AND ASSUME BASED ON THE POSITION THAT IS
09:50AM 4 ADVANTAGEOUS TO THEM FOR THEIR ENTIRE DISCLAIMER ARGUMENT TO
09:50AM 5 APPLY, THAT THE PROBE IS OPTICAL FIBER, WHEN EVEN THE -- YOU
09:50AM 6 KNOW, THEY PUT THE WEIGHT THAT THEY PUT IN THE LOWER
09:50AM 7 PROCEEDINGS, THEY DESCRIBED IT AS MICRO GLASS ROD.

09:50AM 8 THE COURT: WHAT DOES THE PRIOR ART TELL US, THE SUN
09:51AM 9 PRIOR ART? DOES THAT HELP US HERE IN ANY WAY?

09:51AM 10 MR. REYES: NO, NOT TO MY KNOWLEDGE. AND I'M GOING
09:51AM 11 TO LOOK BACK AT MY COCOUNSEL.

09:51AM 12 (DISCUSSION AMONGST PLAINTIFF'S COUNSEL OFF THE RECORD.)

09:51AM 13 MR. REYES: FOR THE PURPOSES OF THIS PROCEEDING WE
09:51AM 14 ARGUE THAT IT IS NOT RELEVANT BECAUSE GOING HOW THEY
09:51AM 15 DESCRIBE -- YOU KNOW, EVEN LOOKING AT -- THE DEFENDANTS
09:51AM 16 WOULDN'T CONTEST THAT WHAT GOES INTO THE SENSOR HOUSING IS
09:51AM 17 OPTICAL FIBER BECAUSE THAT'S --

09:51AM 18 THE COURT: AT THE TOP.

09:51AM 19 MR. REYES: YEAH, AT THE TOP. YOU CAN EVEN SEE THAT
09:51AM 20 IT BENDS, IT'S FIBER, IT'S CABLE.

09:51AM 21 AND ANALOGIZING IT TO SOMETHING IN OUR EVERY DAY LIFE,
09:51AM 22 BIOS CABLE. WHEN A PERSON COMES INTO YOUR HOUSE, THEY HAVE A
09:51AM 23 BUNDLE OF FIBEROPTIC CABLES FOR THEIR BIOS T.V. AND IT'S
09:52AM 24 VISUALLY DISTINCT EVEN FROM A VISUAL STANDPOINT FROM WHAT THE
09:52AM 25 PROBES LOOK LIKE.

09:52AM 1 BUT REGARDLESS, THIS IS WHY WE SAY IT IS A FACT
09:52AM 2 DETERMINATION THAT THEIR PROBES ARE EVEN FIBER-OPTIC.

09:52AM 3 THE COURT: SO TO -- FOR THE COURT TO ADOPT THE
09:52AM 4 DEFENSE DESCRIPTION HERE, YOU'RE SAYING THAT THE COURT WOULD --
09:52AM 5 IT WOULD BE INAPPROPRIATE FOR THE COURT TO MAKE A FACTUAL
09:52AM 6 FINDING THAT THIS IS OPTICAL FIBER THAT COMES OUT THE BOTTOM?
09:52AM 7 THAT'S INAPPROPRIATE?

09:52AM 8 MR. REYES: YES, YOUR HONOR, BECAUSE THE FACTUAL
09:52AM 9 DETERMINATION IS THE PROVINCE OF THE JURY.

09:52AM 10 THE COURT: OKAY.

09:52AM 11 MR. REYES: EVEN IN ALL OF THE LANGUAGE THAT THEY
09:52AM 12 QUOTE, LIKE WE SAID, THERE WAS NO CLEAR AND UNMISTAKABLE
09:52AM 13 DISCLAIMER AKIN TO THE CREDIT CARD INFORMATION CANNOT BE
09:53AM 14 MEMBERSHIP ACTIVATION TOKEN.

09:53AM 15 AND IF THERE'S NO DISCLAIMER TO THE '585 PATENT, ANY
09:53AM 16 DISCLAIMER RELATED TO THE '547 AND '887 PATENT IS EVEN MORE
09:53AM 17 ATTENUATED. YOU KNOW, THE DEFENDANTS --

09:53AM 18 THE COURT: IF IT IS NOT A DIRECT DISCLAIMER, DOES
09:53AM 19 IT THEN MOVE INTO THE REALM OF PERSUASIVENESS? IS THAT THEN
09:53AM 20 HOW I SHOULD LOOK AT IT? THEY DIDN'T SAY IT IS NOT AS BINARY,
09:53AM 21 THEY DIDN'T SAY THIS.

09:53AM 22 YOUR COLLEAGUE OPPOSITE MIGHT SAY, EVEN IF YOU ADOPT THAT,
09:53AM 23 MR. REYES'S POSITION, NONETHELESS, THE FACT THAT THEY MADE
09:53AM 24 THOSE STATEMENTS SHOULD BE PERSUASIVE TO YOU.

09:53AM 25 DO I GIVE IT ANY PERSUASIVE VALUE?

09:53AM 1 MR. REYES: WELL, IN THIS CASE, AS FOR THEIR
09:53AM 2 ARGUMENT FOR A MOTION TO DISMISS AS A MATTER OF LAW, I WOULD
09:53AM 3 SAY NO BECAUSE IT MUST BE A DISCLAIMER FOR YOU -- FOR IT TO BE
09:53AM 4 DISMISSIBLE AS A MATTER OF LAW.

09:53AM 5 THE COURT: OKAY.

09:54AM 6 MR. REYES: SO, AGAIN, GOING TO THE '547 AND '887
09:54AM 7 PATENTS, THEIR ARGUMENTS ARE EVEN MORE ATTENUATED. THEY HAVE
09:54AM 8 TO GO INTO THE PROSECUTION HISTORY AND TALK ABOUT DIFFERENT
09:54AM 9 TERMS THAN WHAT WAS BEING ARGUED TO EVEN GET TO AN ARGUMENT
09:54AM 10 THAT THERE WAS A DISCLAIMER ON THE '547 AND '585 PATENTS.

09:54AM 11 AND THE FEDERAL CIRCUIT IN ADVANCED CARDIO SAID
09:54AM 12 PROSECUTION HISTORY IN RELATED APPLICATION IS NOT RELEVANT
09:54AM 13 WHERE CLAIM TERMS WERE DIFFERENT.

09:54AM 14 SO MOVING ON FROM THE '887. SARTORIUS HAS PLED SUFFICIENT
09:54AM 15 FACTS FOR THERE TO BE A REASONABLE INFERENCE THAT THE
09:54AM 16 DEFENDANTS HAVE INFRINGED THE '887 PATENTS.

09:54AM 17 SO ONE OF THE THINGS THAT WE WANT TO NOTE IS IN THE
09:55AM 18 DEFENDANTS' PRESENTATION AND THEIR ARGUMENT IS THAT THEY'RE
09:55AM 19 ASKING THE COURT TO NOT ONLY CONSTRUE THE CLAIM TERMS BEFORE
09:55AM 20 THERE'S BEEN ANY BRIEFING OR ANY EXPERT TESTIMONY, BUT THEN TO
09:55AM 21 APPLY THEM TO THE ACCUSED PRODUCTS.

09:55AM 22 GATOR BIO -- I'M SORRY, THE DEFENDANTS' ENTIRE ARGUMENT
09:55AM 23 REGARDING THE TWO ASSAY FORMATS THAT HE DISCUSSED, THE
09:55AM 24 IMMOBILIZED SUBSTRATE AND SUBSTRATE CAPTURE FORMAT, IT'S AN
09:55AM 25 ATTEMPT TO READ LIMITATIONS FROM THE SPECIFICATION INTO THE

10:10AM 1 CATEGORY, AND WE'VE ESTABLISHED THE BASES FOR THEM HAVING
10:10AM 2 PRE-SUIT KNOWLEDGE.

10:10AM 3 BUT THE FIRST CIRCUIT -- I'M SORRY. THE FEDERAL CIRCUIT
10:10AM 4 IN MITUTOYO STATED THAT YOU ONLY NEED A SHOWING OF PRE-SUIT
10:10AM 5 KNOWLEDGE TO SUSTAIN AT THE PLEADING STAGES A CLAIM FOR WILLFUL
10:10AM 6 INFRINGEMENT. AND MUCH OF THIS IS BECAUSE ALL OF THE ACTUAL
10:10AM 7 INFORMATION REGARDING WILLFUL INFRINGEMENT, IT'S IN THE HANDS
10:10AM 8 OF THE DEFENDANT.

10:10AM 9 BUT I BELIEVE EVEN APART FROM THAT, WE HAVE PLAUSIBLY
10:10AM 10 ALLEGED THAT THE COURT COULD REASONABLY INFER EGREGIOUS CONDUCT
10:10AM 11 TOOK PLACE AND SUFFICIENT FACTS TO SUPPORT THE CLAIM FOR
10:10AM 12 WILLFUL INFRINGEMENT.

10:10AM 13 THE COURT: OKAY.

10:10AM 14 MR. REYES: THANK YOU.

10:10AM 15 THE COURT: WITH THAT, I WILL ASK YOU TO GIVE THE
10:10AM 16 SPELLING OF THE CASE TO OUR COURT REPORTER.

10:10AM 17 MR. REYES: YES. MITUTOYO, M-I-T-U-T-O-Y-O.

10:11AM 18 THE COURT: THANK YOU. THANK YOU, MR. REYES. I
10:11AM 19 APPRECIATE IT.

10:11AM 20 MR. REYES: THANK YOU.

10:11AM 21 MR. SANTHANAM: IF THE COURT MIGHT BRIEFLY INDULGE
10:11AM 22 ME.

10:11AM 23 THE COURT: YOU'RE THE MOVING PARTY, AND YOU GET THE
10:11AM 24 LAST WORD. I THINK YOU CAN ACCOMPLISH THIS IN TEN MINUTES.

10:11AM 25 MR. SANTHANAM: YES.

1 YOUR HONOR, I WOULD LIKE TO BRIEFLY RESPOND TO SOME OF
2 THESE ARGUMENTS THAT OUR FRIENDS ON THE OTHER SIDE HAVE MADE.

3 THE FIRST IS THAT THEY SAID IN THE '585 PATENT IPR THAT
4 THERE WAS NO CLEAR AND UNMISTAKABLE STATEMENT OR DISCLAIMER. I
5 WOULD SAY TO THE EXTENT THAT THE COURT WOULD LIKE TO SEE A
6 CLEAR AND UNMISTAKABLE DISCLAIMER, THE PATENT OFFICE ACTUALLY
7 EXPLICITLY STATES IT.

8 WE QUOTE FROM THE PATENT OFFICE'S DECISION, THIS IS
9 EXHIBIT 5 AT PAGES 4 AND 21, AND WE ADDRESS IT IN OUR REPLY
10 BRIEF, ALSO IN OUR OPENING BRIEF, BUT IN OUR REPLY BRIEF ON
11 PAGE 4.

12 WHAT THE PATENT OFFICE HAS SAID IN DENYING INSTITUTION OF
13 THE IPR BASED ON THE ARGUMENTS SARTORIUS MADE, AND I'M QUOTING,
14 SARTORIUS UNAMBIGUOUSLY ADMITS THAT FIGURE 2 ILLUSTRATES AN
15 UNCLAIMED EMBODIMENT OF THE INVENTION AND ADVANCES SIGNIFICANT
16 INFORMATION THAT DETAILS HOW AND WHY THE DISCLOSURES IN SUN,
17 UPON WHICH PETITIONER RELIES TO MAKE OUT THE REMOVABLE
18 ATTACHMENT LIMITATION, CORRESPOND TO THE UNCLAIMED EMBODIMENT.

19 SO THE NOTION THAT WE DO NOT HAVE A DISCLAIMER HERE CAN BE
20 PUT TO REST. YOU RARELY WILL FIND AN INSTANCE WHERE THE PATENT
21 OFFICE SAYS THAT THE PATENT OWNER SAYS SOMETHING UNAMBIGUOUSLY,
22 THAT SOMETHING IS UNCLAIMED. THAT IS ALMOST NEVER FOUND IN AN
23 IPR PROCEEDING OR A PROSECUTION OF A PATENT. THIS IS ABOUT AS
24 CLEAR AS IT GETS IN A CASE OF DISCLAIMER.

25 NOW, I'D LIKE TO TURN TO THIS ARGUMENT THAT THEY MADE,

10:13AM 1 THAT OUR PROBES, THE GATOR PROBES DON'T COMPRISE OPTICAL FIBER.
10:13AM 2 THAT IS ABSOLUTELY ASTONISHING FOR A NUMBER OF REASONS, AND IT
10:13AM 3 IS COMPLETELY CONTRADICTED BY THE PLEADING RECORD. AND I'LL
10:13AM 4 IDENTIFY TWO INSTANCES FOR THE COURT TO TAKE A LOOK.

10:13AM 5 THE FIRST IS, IF YOUR HONOR -- I HAVE UP HERE SLIDE 11
10:13AM 6 FROM OUR DEMONSTRATIVES. THIS IS THEIR OWN EXPERT FROM THE ITC
10:14AM 7 CASE, RYAN BAILEY, WHO WAS THEIR TECHNICAL EXPERT WHO OPINED ON
10:14AM 8 INFRINGEMENT. WE ASKED HIM POINT-BLANK AT THE TRIAL AT THE ITC
10:14AM 9 CASE IN RELATION TO A PHOTOGRAPH OF THE ACCUSED PRODUCTS, AND
10:14AM 10 HE ADMITTED WHAT GOES INTO THE MECHANICAL COUPLING ARE FIBER
10:14AM 11 BUNDLES, AND WHAT COMES OUT OF IT ARE THE GATOR FIBER PROBES.
10:14AM 12 THEIR OWN EXPERT ON THE RECORD SAYING THAT THIS IS A FIBER
10:14AM 13 PROBE.

10:14AM 14 BUT IF YOUR HONOR DOESN'T WANT TO LOOK TO THE ITC
10:14AM 15 TRANSCRIPT, THEN YOU CAN JUST LOOK TO THEIR SECOND AMENDED
10:14AM 16 COMPLAINT. AND I HAVE HERE CLAIM 1. THIS IS FROM THE SECOND
10:14AM 17 AMENDED COMPLAINT, PARAGRAPH 152.

10:14AM 18 AND THIS IS THE PORTION OF THE COMPLAINT THAT RELATES TO
10:15AM 19 THAT FOURTH PATENT, THE '588 PATENT. AND THEY ASSERT THAT OUR
10:15AM 20 PROBES INFRINGE THIS '588 PATENT. AND IT'S INTERESTING, IF YOU
10:15AM 21 READ WHAT THE CLAIM ACTUALLY REQUIRES. AND IT SPECIFICALLY
10:15AM 22 SAYS THAT IT HAS TO HAVE AT LEAST ONE DISCRETE OPTICAL SENSING
10:15AM 23 ASSEMBLY, WHICH WHAT THEY ARE CALLING THE PROBES, AND IT
10:15AM 24 COMPRISES AN OPTICAL FIBER THAT HAS FIRST AND SECOND REFLECTING
10:15AM 25 SURFACES.

10:15AM 1 SO THE NOTION THAT THERE'S NOTHING IN THE RECORD ABOUT
10:15AM 2 THESE PROBES COMPRISING OPTICAL FIBER, THAT'S JUST FLAT OUT
10:15AM 3 WRONG. THEY THEMSELVES HAVE ASSERTED IN THIS CASE. THEY HAVE
10:15AM 4 ACCUSED THE GATOR BIO OF FIBER PROBES, AND IF THOSE PROBES DO
10:15AM 5 NOT HAVE OPTICAL FIBER, YOUR HONOR CAN DISMISS THIS FOURTH '588
10:15AM 6 PATENT RIGHT HERE AND NOW BECAUSE THE CLAIMS REQUIRE OPTICAL
10:15AM 7 FIBER.

10:15AM 8 AND, YOU KNOW, IF YOU LOOK AT THE COMPLAINT ON ITS FACE,
10:15AM 9 THEY ADMIT THAT THESE PROBES HAVE AN OPTICAL FIBER.

10:16AM 10 AND SO IF WE GO BACK TO WHAT THEY ARGUED IN THE ITC CASE,
10:16AM 11 THIS IS ON SLIDE 10 OF OUR DEMONSTRATIVES, THERE'S NO DISPUTE
10:16AM 12 THAT WHAT GOES INTO THE MECHANICAL COUPLING IS OPTICAL FIBER,
10:16AM 13 AND THERE'S NO DISPUTE THAT WHAT COMES OUT OF IT ARE THESE
10:16AM 14 GATOR PROBES. AND THEY'RE TRYING TO CAST DOUBT ON WHETHER
10:16AM 15 THOSE PROBES HAVE OPTICAL FIBER IN THEM. BUT FOR THEIR
10:16AM 16 ASSERTION OF THE '588 PATENT TO STAND, THESE PROBES HAVE TO
10:16AM 17 HAVE FIBER IN THEM.

10:16AM 18 AND IF YOU LOOK AT THEIR OWN EXPERT'S TESTIMONY IN THE ITC
10:16AM 19 CASE, HE ADMITTED THAT THESE ARE FIBER PROBES. AND THAT COMES
10:16AM 20 OUT OF EXHIBIT 1, WHICH IS THE ITC EVIDENTIARY HEARING
10:16AM 21 TRANSCRIPT PAGE 666, LINE 16 TO PAGE 667, LINE 2.

10:16AM 22 SO THAT POINT CANNOT BE DISPUTED.

10:16AM 23 I WOULD BRIEFLY LIKE TO ADDRESS, YOU KNOW, TWO OTHER
10:16AM 24 POINTS THAT THEY MADE. WITH RESPECT TO THE '887 PATENT, THEY
10:17AM 25 SAY, OH, CONCEIVABLY SOMEONE COULD USE THESE PROBES WITH

1
2
3 CERTIFICATE OF REPORTER
4
5
6

7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
10 HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14 
15

16 IRENE RODRIGUEZ, CSR, RMR, CRR
17 CERTIFICATE NUMBER 8074

18 DATED: JUNE 18, 2025
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