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UNITED STATES PATENT AND TRADEMARK OFFICE

08:42:01

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYNGENTA CROP PROTECTION AG,

Petitioner,

v.

UPL LTD.,

Patent Owner.

Case No. PGR2023-00017
U.S. Patent No. 11,445,727

September 20, 2023

CROSS-EXAMINATION

CAIO PRATES

REPORTED BY: SUSAN L. CIMINELLI, CRR, RPR VIA ZOOM

1 Cross-Examination of CAIO PRATES, a
2 witness herein, called for examination by counsel
3 for Patent Owner in the above-entitled matter,
4 pursuant to notice, the witness being duly sworn by
5 SUSAN L. CIMINELLI, CRR, RPR, a Notary Public in and
6 for the District of Columbia, taken remotely via
7 Zoom videoconference and at the offices of Baker
8 Law, 1050 Connecticut Avenue, Suite 1100,
9 Washington, D.C., commencing at 9:05 a.m.

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Henderson Legal Services

202-220-4158

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1 APPEARANCES:

2 On behalf of the Patent Owner:

3 FINNEGAN, HENDERSON, FARABOW, GARRETT &
4 DUNNER, LLP5 BY: MARK J. FELDSTEIN, Ph.D.
6 MAXIMILIENNE GIANNELLI, Ph.D.

7 DAVID KLECYNGIER (VIA ZOOM)

8 901 New York Avenue, N.W.

9 Washington, D.C. 20001-4413

10 (202) 408-4000

11 mark.feldstein@finnegan.com

12 maximilienne.giannelli@finnegan.com

13

14 On behalf of the Petitioner:

15 BAKER HOSTETLER

16 By: TONI-JUNELL HERBERT, ESQ.

17 1050 Connecticut Avenue, Suite 1100

18 Washington, D.C.

19 (202) 861-1578

20 therbert@bakerlaw.com

21

22

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1 C O N T E N T S

2 CAIO PRATES

3 EXAMINATION PAGE

4 By Mr. Feldstein 6

5

6 E X H I B I T S

7 (Previously marked exhibits referred to.)

8 EXHIBIT NO. PAGE NO.

9 Exhibit 1020 Declaration Prates 7

10 Exhibit 1001 U.S. Patent '727 7

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1 P R O C E E D I N G S 08:55:28

2 THE VIDEOGRAPHER: We are now on the 09:04:23

3 record. This is video number 1 in the video 09:04:25

4 recorded deposition of Dr. Caio Prates, taken in 09:04:28

5 matter of Syngenta Crop Protection AG, Petitioner, 09:04:33

6 v. UPL Ltd., Patent Owner. This is pending before 09:04:39

7 the United States Patent and Trademark Office before 09:04:41

8 the Patent Trial and Appeal Board for Patent Number 09:04:47

9 11,445,727, and IPR number or PGR number 2023-00017. 09:04:50

10 Today's date is September 20th, 2023. 09:05:02

11 The time on the video screen is 9:05 a.m. This 09:05:05

12 deposition is being held at the location of 1050 09:05:09

13 Connecticut Avenue, Northwest, Suite 1100 09:05:13

14 Washington, D.C. The court reporter is Susan 09:05:17

15 Ciminelli by remote. The videographer in person is 09:05:21

16 Daniel Holmstock. We are both representing 09:05:25

17 Henderson Legal Services. 09:05:27

18 Counsel, will you please introduce 09:05:29

19 yourself and whom you represent, followed by the 09:05:30

20 court reporter administering the oath. 09:05:33

21 MR. FELDSTEIN: I'm mark Feldstein. I'm 09:05:33

22 from the law firm of Finnegan Henderson. I'm 09:05:35

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1 representing the Patent Owner in this case. 09:05:37

2 MS. GIANNELLI: Maximilienne Giannelli 09:05:39

3 also here from Finnegan, on behalf of the Patent 09:05:43

4 Owner, UPL Ltd. 09:05:45

5 MS. HERBERT: Toni Herbert, here on 09:05:46

6 behalf of Syngenta Crop Protection AG for Baker 09:05:48

7 Hostetler. 09:05:55

8 Whereupon, 09:05:55

9 CAIO PRATES, 09:05:55

10 was called as a witness, and having been duly sworn, 09:05:55

11 was examined and testified as follows: 09:05:55

12 EXAMINATION BY COUNSEL FOR PATENT OWNER 09:06:17

13 BY MR. FELDSTEIN: 09:06:17

14 Q. Good morning, Dr. Prates. How are you? 09:06:18

15 A. Good. 09:06:21

16 Q. Good. You wrote a declaration in this 09:06:22

17 proceeding, correct? 09:06:25

18 MS. HERBERT: Objection, form. 09:06:26

19 BY MR. FELDSTEIN: 09:06:28

20 Q. Is that correct, sir? 09:06:28

21 A. We -- my team provided data that they 09:06:30

22 ultimately wrote the declaration. 09:06:36

1 Q. The declaration was written in English, 09:06:37
2 is that correct? 09:06:40

3 A. Yes. 09:06:40

4 Q. And it relates to a patent, the '727 09:06:41
5 patent, is that correct? 09:06:46

6 MS. HERBERT: Objection, form. 09:06:47

7 BY MR. FELDSTEIN: 09:06:49

8 Q. Is that correct, sir? 09:06:49

9 A. I don't remember exactly the name -- the 09:06:50
10 number, sorry. 09:06:52

11 (Exhibit 1020 was referenced.) 09:06:52

12 BY MR. FELDSTEIN: 09:06:53

13 Q. Okay. I'm going to hand you your 09:06:53
14 declaration, Exhibit 1020. Can you confirm that's 09:06:57
15 your declaration in this case, sir? 09:07:00

16 A. Yes, it is. 09:07:02

17 Q. And if you look on the cover page of your 09:07:25
18 declaration, there is a patent number identified in 09:07:26
19 the middle of the page, 11,445,727. Do you see 09:07:29
20 that? 09:07:35

21 A. Yes. 09:07:35

22 (Exhibit 1001 was referenced.) 09:07:35

1 BY MR. FELDSTEIN: 09:07:35

2 Q. I'm going to hand you Exhibit 1001. Can 09:07:35
3 you confirm that's the patent that's referenced on 09:07:39
4 your declaration, sir? 09:07:43

5 A. Yes, the number is the same. 09:07:44

6 Q. And you're familiar -- I'm going to call 09:07:49
7 it the '727 patent. You're familiar with the '727 09:07:52
8 patent? 09:07:56

9 A. You mean this one? 09:07:56

10 Q. Correct. 09:07:56

11 A. I don't recognize it. Just maybe the 09:08:18
12 part of this table, but not the full document. 09:08:29

13 Q. And can you -- so that the reporter can 09:08:29
14 report it, can you describe and specify what table 09:08:30
15 you're pointing at? There is a column number at the 09:08:33
16 top of each column of the patent. Are you in column 09:08:55
17 20? 09:08:58

18 A. Column 20. 09:08:59

19 Q. And then is it table number 1 that you're 09:09:01
20 pointing to? 09:09:01

21 A. Table number 1, yeah. 09:09:03

22 Q. And other than table number 1, you're not 09:09:04

9

1 familiar with anything in the '727 patent, Exhibit 09:09:06

2 1001? 09:09:10

3 **A. No.** 09:09:11

4 **Q.** Okay. Can we turn back to your 09:09:11

5 declaration, Exhibit 1020? Can we turn to paragraph 09:09:16

6 2 in your declaration, sir? 09:09:21

7 **A. Okay.** 09:09:22

8 **Q.** Can you read paragraph 2 into the record, 09:09:23

9 the first sentence? 09:09:26

10 **A. My name is Caio Prates --** 09:09:27

11 **Q.** I'm sorry, sir. Paragraph 2. 09:09:30

12 **A. Okay. I make this declaration based upon** 09:09:32

13 **personal knowledge.** 09:09:37

14 **Q.** Is that correct, that everything in the 09:09:39

15 declaration is based on your own firsthand personal 09:09:41

16 knowledge? 09:09:45

17 **A. It's actually based on the data that we** 09:09:47

18 **generated.** 09:09:49

19 **Q.** Is everything that you report in your 09:09:50

20 declaration based on your own firsthand personal 09:09:54

21 knowledge, is my question for you, sir. 09:09:57

22 **A. Yes, but this -- my opinion is related to** 09:10:03

1 the facts -- the date that we provided. 09:10:07

2 Q. All the facts reported in your opinion 09:10:09
3 are based on your personal knowledge, is that 09:10:10
4 correct? 09:10:13

A. Yes. 09:10:13

6 Q. In preparing your declaration, Exhibit 09:10:13
7 1020, what did you review, if anything? 09:10:21

8 MS. HERBERT: Objection, privilege. 09:10:27

9 Dr. Prates, I caution that you can answer generally, 09:10:30

10 but not as to any specifics. 09:10:34

11 THE WITNESS: Can you repeat the 09:10:36

12 question, please? 09:10:37

13 BY MR. FELDSTEIN: 09:10:39

14 Q. In preparing -- I'm going to change the 09:10:40
15 question a little bit. In preparing your 09:10:42
16 declaration, Exhibit 1020, what information, if any, 09:10:45
17 did you rely on? 09:10:48

18 A. We provide those data and sent to -- 09:10:50

19 Q. I'm sorry, "we" is who? 09:11:01

A. "We" is me and my team. 09:11:03

21 Q. And you provide what data? 09:11:05

22 A. The data that is present in the table 2, 09:11:11

11

1 **table 3, table 5.** 09:11:17

2 Q. Where did you -- 09:11:23

3 **A. 6, sorry.** 09:11:24

4 Q. Where did you obtain that data from? 09:11:25

5 Where did you obtain that data from? 09:11:28

6 **A. The data come from the field trials that** 09:11:30

7 **we implemented.** 09:11:33

8 Q. Was it from reports of the field trials 09:11:34

9 that you implemented? 09:11:37

10 **A. I'm sorry?** 09:11:37

11 Q. Was it from reports or other documents 09:11:37

12 reflecting the field trials you implemented? 09:11:43

13 **A. I don't understand your question. Can** 09:11:43

14 **you repeat, please?** 09:11:43

15 MR. FELDSTEIN: Sure. Court reporter, 09:11:43

16 can you read back the question? 09:11:43

17 THE REPORTER: "Question: Was it from 09:11:37

18 reports or other documents reflecting the field 09:11:38

19 trials you implemented?" 09:11:44

20 BY MR. FELDSTEIN: 09:12:18

21 Q. Where did you obtain the data that you 09:12:19

22 provided to your counsel that's reflected in Exhibit 09:12:22

12

1 1020? 09:12:26

2 A. We implemented trials in Brazil. Field 09:12:26

3 trials for soybean -- 09:12:26

4 (Discussion off the record.) 09:12:26

5 BY MR. FELDSTEIN: 09:12:48

6 Q. Let me ask the question again. Where did 09:12:48

7 you obtain the data that you provided to your 09:12:52

8 counsel that's reflected in Exhibit 1020? 09:12:54

9 A. Okay. We implemented field trials in 09:12:57

10 Brazil for soybean rust control in the season 2021, 09:13:01

11 and also '21-'22. 09:13:08

12 Q. Was the data stored somewhere that you 09:13:11

13 pulled it from, or did you just have it in your 09:13:13

14 head, for example? 09:13:16

15 A. Oh, no. We also reported to the 09:13:16

16 government in Brazil. 09:13:22

17 Q. So is the data that is in Exhibit 1020 a 09:13:23

18 subset of the data that you collected in those 09:13:28

19 trials? 09:13:31

20 A. By subset, you mean that it's -- ask me 09:13:31

21 again, please? 09:13:44

22 Q. Is the data in Exhibit 1020 a subset of 09:13:44

13

1 the data you collected in those trials? 09:13:48

2 A. Yes. 09:13:50

3 Q. Is it a subset of the data that you 09:13:51

4 provided to the government regarding those trials? 09:13:53

5 A. Yes. 09:13:57

6 Q. And so did you pull the data that's in 09:13:59

7 Exhibit 1020 from a report that had additional 09:14:07

8 information regarding those trials? 09:14:11

9 A. Yes. 09:14:15

10 Q. And is that an internal report at 09:14:18

11 Syngenta? 09:14:22

12 A. Yes. 09:14:23

13 Q. And what other information is contained 09:14:24

14 in that internal report besides what's reported in 09:14:26

15 the declaration? 09:14:30

16 A. We provide all the information regarding 09:14:31

17 the trials. For example, the treatment list. The 09:14:40

18 locations that we implement those trials. The 09:14:46

19 timing of applications. The UP, that is a document 09:14:50

20 that's required to implement those trials. And also 09:14:58

21 the final field book containing all the assessments 09:15:00

22 that we provided. 09:15:04

14

1 Q. The final field book, is that what you 09:15:06
2 said? 09:15:13

3 A. Yeah, field book. 09:15:13

4 Q. What is the final field book? 09:15:14

5 A. Field book is a document that contains 09:15:17
6 all the assessment that we did. 09:15:19

7 Q. So for the trials that are described in 09:15:21
8 Exhibit 1020, there is a final field book for each 09:15:23
9 of those? 09:15:26

10 A. Yes. 09:15:26

11 Q. And those final field books contain 09:15:26
12 additional information beyond what's reported in 09:15:30
13 Exhibit 1020? 09:15:32

14 A. Yes, contains more assessment than 09:15:33
15 related to synergy. For example, phytotoxicity, 09:15:37
16 defoliation, yield. That is assessment related -- 09:15:47
17 it's not related to synergy, to the Colby. 09:16:09

18 Q. Did you say Colby, sir? C-o-l-b-y? 09:16:09

19 A. Yeah. Colby, yeah. 09:16:12

20 (Discussion off the record.) 09:16:12

21 BY MR. FELDSTEIN: 09:16:14

22 Q. So let me just back up just to make sure 09:16:14

15

1 the question is clear on the record. Those final 09:18:11
2 field books you referred to contain additional 09:18:13
3 information beyond what's reported in Exhibit 1020, 09:18:15
4 is that correct? 09:18:19

5 MS. HERBERT: Form. 09:18:19

6 THE WITNESS: Yes. 09:18:20

7 BY MR. FELDSTEIN: 09:18:22

8 Q. Is that correct, sir? 09:18:22

9 A. Yes. 09:18:23

10 Q. And is -- I think I had asked you what 09:18:25
11 information you relied on to prepare your 09:18:39
12 declaration, Exhibit 1020. Is all the information 09:18:47
13 you relied on to prepare Exhibit 1020 in those field 09:18:52
14 books? 09:18:56

15 MS. HERBERT: Objection, form. And 09:18:57
16 objection, privilege. 09:18:58

17 BY MR. FELDSTEIN: 09:19:00

18 Q. Can you answer the question, sir? 09:19:00

19 A. Yes. We -- we have more information that 09:19:02
20 is not related to the synergy things, for example, 09:19:11
21 phytotoxicity, defoliation, yield. Those are 09:19:18
22 assessments that is not related to the synergy 09:19:24

16

1 **things.** 09:19:27

2 Q. And those assessments are in those field 09:19:27

3 books? 09:19:29

4 **A. Yes, correct.** 09:19:30

5 Q. My question was, is all the information 09:19:31

6 that is in Exhibit 1020, is it also in the field 09:19:33

7 books, is that correct? 09:19:37

8 **A. Yes.** 09:19:38

9 Q. Beyond the information that's in the 09:19:39

10 field book, did you rely on any other information to 09:19:42

11 prepare your declaration, Exhibit 1020? 09:19:45

12 MS. HERBERT: Objection, privilege. And 09:19:49

13 I caution you again to answer generally, but not 09:19:50

14 specifically. 09:19:53

15 THE WITNESS: I don't remember exactly. 09:19:57

16 BY MR. FELDSTEIN: 09:20:11

17 Q. Do you remember generally what other 09:20:12

18 information, if any, beyond what's in the field book 09:20:14

19 you relied on to prepare your declaration, Exhibit 09:20:16

20 1020? 09:20:19

21 **A. No. I already told you the information** 09:20:20

22 that contains that, in the field book. 09:20:28

1 Q. So your testimony is, to the best of your 09:20:30
2 knowledge, in preparing Exhibit 1020, you didn't 09:20:33
3 rely on any information beyond what's reported in 09:20:36
4 the field books you mentioned, is that correct? 09:20:40

5 MS. HERBERT: Objection, form. 09:20:43

6 BY MR. FELDSTEIN: 09:20:45

7 Q. Is that correct, sir? You need to answer 09:20:45
8 the question, sir, orally. 09:20:50

9 A. I don't know exactly. 09:20:53

10 Q. I'm sorry, you don't know exactly what? 09:20:55

11 A. The data that we are asking for. 09:20:58

12 Q. My question is, is your testimony that to 09:21:01
13 the best of your knowledge, in preparing Exhibit 09:21:07
14 1020, you didn't rely on any information beyond 09:21:09
15 what's contained in those field books. Is that your 09:21:12
16 testimony? 09:21:15

17 MS. HERBERT: Objection, form. 09:21:16

18 THE WITNESS: I don't know. I don't 09:21:22
19 remember. 09:21:28

20 BY MR. FELDSTEIN: 09:21:28

21 Q. You don't remember if you relied on any 09:21:29
22 other information beyond what's in the field book, 09:21:31

18

1 is that correct? 09:21:34

2 A. The information that you are asking me, I 09:21:35

3 already answered you that is -- is there in the 09:21:47

4 field book. 09:21:51

5 Q. My question is, in preparing Exhibit 09:21:52

6 1020, do you remember, yes or no, if you relied on 09:21:58

7 any information that's not also contained in those 09:22:01

8 field books? 09:22:04

9 A. I don't remember. 09:22:05

10 Q. Okay. How long ago did you prepare the 09:22:06

11 declaration, sir? 09:22:11

12 A. We started in January of '23. 09:22:12

13 Q. So earlier this year is when you prepared 09:22:26

14 the declaration? 09:22:28

15 A. Yes. 09:22:29

16 Q. And you don't remember what other 09:22:29

17 information, if any, you relied on beyond the 09:22:31

18 information in the field book, is that correct? 09:22:34

19 A. Yes, because we generated data in to 09:22:36

20 2020, 2021, we start generating data. 09:22:40

21 Q. But I'm asking you, when you prepared 09:22:43

22 your declaration -- I'm trying to determine what, if 09:22:46

19

1 any, additional information you relied on to prepare 09:22:49

2 the declaration. Do you understand my question? 09:22:51

3 MS. HERBERT: Objection, form. 09:22:54

4 BY MR. FELDSTEIN: 09:22:56

5 Q. Do you understand my question, sir? 09:22:56

6 A. If you can ask a little bit different 09:22:58

7 than you have. 09:23:01

8 Q. I'm trying to understand what information 09:23:03

9 you relied on in preparing your declaration, Exhibit 09:23:07

10 1020, beyond information that's contained in the 09:23:11

11 field books. 09:23:15

12 A. The informations are similar in the 09:23:18

13 declaration and in the field book. 09:23:21

14 Q. And you relied on nothing else beyond 09:23:23

15 that information. Is that your testimony? 09:23:27

16 A. I don't remember, because we have a lot 09:23:29

17 of data in the field book. More than the 09:23:36

18 information that is not related to the synergy, as I 09:23:41

19 told you. 09:23:44

20 Q. Did you rely on oral discussions with any 09:23:45

21 of your colleagues to prepare the information that's 09:23:48

22 in Exhibit 1020? 09:23:51

20

A. Only with my attorneys.

2 Q. Did you rely on any documents to prepare 09:23:57
3 the information that's in Exhibit 1020? 09:24:02

[illegible]

5	Q. And the information in Exhibit 2020 --	09:24:06
6	excuse me, the information in Exhibit 1020, you	09:24:11
7	personally extracted that from the field books, is	09:24:15
8	that correct?	09:24:18

9 A. That's correct. 09:24:18

10 Q. Okay. Did you provide those field books 09:24:18
11 to your attorneys or just the data? 09:24:23

A. Just the data.

13 Q. Let me turn to paragraph 3 in your 09:24:27
14 declaration. Can you read the final sentence of the 09:24:36
15 paragraph into the record. 09:24:47

16	A. "This involves a lot of trials and	09:24:49
17	methods involved in testing chemical compounds to	09:24:54
18	determine if they exhibit relevant fungicidal	09:24:57
19	activity."	09:25:01

20 Q. What did you mean by relevant fungicidal 09:25:03
21 activity? 09:25:07

22 A. If -- if the fungicide showed good 09:25:07

21

1 **control for the related disease that we are testing.** 09:25:15

2 Q. And so the only activity you're 09:25:20

3 referencing by relevant fungicidal activity is 09:25:24

4 control? 09:25:28

5 A. **Yeah.** 09:25:28

6 Q. Now, in paragraph 4 of your declaration, 09:25:30

7 Exhibit 1020, you see, "Syngenta attempted to 09:25:41

8 duplicate the tests in U.S. Patent 11,445,727, as 09:25:45

9 well as other combinations claimed in the '727 09:25:52

10 patent." Did I read that correctly? 09:25:57

11 A. **Yes.** 09:25:59

12 Q. And you know that to be true from your 09:26:00

13 personal knowledge, sir? 09:26:02

14 A. **Yeah.** 09:26:03

15 Q. What did you mean by other combinations 09:26:10

16 claimed in the '727 patent? 09:26:14

17 MS. HERBERT: Objection, scope. 09:26:16

18 BY MR. FELDSTEIN: 09:26:30

19 Q. Can you answer the question, sir? 09:26:30

20 A. **Yeah. The combinations that you can find** 09:26:32

21 **in the table -- in the table 6.** 09:26:40

22 Q. So by other combinations claimed in the 09:26:52

22

1 '727 patent, you're referring to combinations in 09:26:55

2 table 6 in Exhibit 1020? 09:26:59

3 A. Yes. 09:27:01

4 Q. Now, I had already given you Exhibit 09:27:02

5 1001, the '727 patent, and you had said you're only 09:27:08

6 familiar with table 1 in column 20, correct? 09:27:11

7 A. Correct. 09:27:13

8 Q. When did you first become familiar with 09:27:14

9 any aspect of the '727 patent? 09:27:17

10 A. Because we received some informations 09:27:20

11 from our legal party, Syngenta. 09:27:29

12 Q. And I'm sorry, maybe I didn't say the 09:27:32

13 question well. But when? I'm asking for timing. 09:27:35

14 When did you first become familiar with any aspect 09:27:37

15 of the '727 patent? 09:27:39

16 A. I don't remember exactly. Sorry. 09:27:41

17 Q. Do you remember approximately? 09:27:48

18 A. 2021-'22. 09:27:49

19 Q. And maybe you started to answer this 09:27:58

20 already, but you say, "Syngenta attempted to 09:28:04

21 duplicate the tests." Why did Syngenta attempt to 09:28:07

22 duplicate the test in U.S. Patent 11,445,727, to 09:28:11

23

1 your understanding? 09:28:17

2 MS. HERBERT: Objection, privilege. And 09:28:18

3 again, I caution you to answer generally, and not 09:28:24

4 specifically. 09:28:26

5 THE WITNESS: We duplicated to confirm if 09:28:47

6 there is synergy or not. 09:28:52

7 BY MR. FELDSTEIN: 09:28:56

8 Q. And when you say Syngenta attempted to 09:28:57

9 duplicate, you were involved in that, such that you 09:28:59

10 have firsthand knowledge of that attempt, is that 09:29:04

11 correct? 09:29:09

12 A. Yeah. 09:29:09

13 Q. So you were involved from the start in 09:29:13

14 Syngenta's attempt to duplicate the tests in U.S. 09:29:16

15 Patent 11,445,727, as well as other combinations 09:29:21

16 claimed in the '727 patent? 09:29:25

17 A. Yes. 09:29:27

18 MS. HERBERT: Make sure you speak loud 09:29:32

19 enough, too. 09:29:34

20 THE WITNESS: Okay. Okay. 09:29:36

21 BY MR. FELDSTEIN: 09:29:37

22 Q. Other than your attorneys, who else was 09:29:37

24

1 involved in Syngenta's attempt to duplicate the 09:29:40

2 tests in the '727 patent? 09:29:43

3 **A. You're asking me who?** 09:29:45

4 **Q. Correct. Who other than possibly** 09:29:46

5 **counsel?** 09:29:48

6 **A. Okay. Only me, my team, the field** 09:29:48

7 **trialist, and the legal part of Syngenta that is** 09:29:59

8 **represented by Toni and Gilford.** 09:30:01

9 **Q. And your team consists of who?** 09:30:04

10 **A. We are 10 food trialists.** 09:30:07

11 **(Discussion off the record.)** 09:30:07

12 **BY MR. FELDSTEIN:** 09:30:20

13 **Q. Can you just repeat it for the court** 09:30:20

14 **reporter, what you said, sir?** 09:30:22

15 **A. I said that we have 10 field trialists in** 09:30:22

16 **my team that implement those trials.** 09:30:26

17 **Q. You're saying field trialists?** 09:30:28

18 **A. Field trialists, yeah.** 09:30:30

19 **Q. Thank you. The '727 patent, which you** 09:30:32

20 **have as Exhibit 1001, if you look -- if you look** 09:30:58

21 **under the patent number, do you see the date of the** 09:31:04

22 **patent on the first page?** 09:31:08

25

A. The first page? 09:31:09

2 Q. Do you see the date, it says, September 09:31:13

3 20th, 2022? 09:31:15

[illegible]

5 Q. Do you see that? 09:31:17

6 **A.** **Yeah, I see it.** 09:31:18

7 Q. You said you became familiar with the 09:31:19

8 patent in 2020 or 2021, correct? 09:31:21

9 MS. HERBERT: Objection, form. 09:31:25

10 THE WITNESS: I said that I don't 09:31:27

```
11 remember exactly the date.                                09:31:31
```

12 BY MR. FELDSTEIN: 09:31:33

13 Q. You said, to the best of your 09:31:34

14 recollection, it was 2020 or 2021, correct? 09:31:36

15 A. Yeah, if I'm not wrong. 09:31:39

16 Q. And that was years before the patent 09:31:46

17 issued, correct? 09:31:48

18 **A.** I don't remember. 09:31:50

19 Q. You don't remember if 2020 is years 09:31:56

20 before 2022? 09:32:02

21 **A.** **Yeah, I remember that.** 09:32:03

22 Q. Okay. And so you testified that, to the 09:32:04

26

1 best of your knowledge, you became familiar with the 09:32:08

2 '727 patent somewhere around 2020, two years before 09:32:11

3 it issued, is that correct? 09:32:14

4 MS. HERBERT: Objection, form. 09:32:16

5 THE WITNESS: Unfortunately, I don't 09:32:21

6 remember exactly the date. 09:32:23

7 BY MR. FELDSTEIN: 09:32:24

8 Q. You started field trials in 2020, 09:32:25

9 correct? 09:32:28

10 A. **Yeah, December of '20.** 09:32:28

11 Q. December 2020, that was your attempt to 09:32:31

12 duplicate tests in the '727 patent back in December 09:32:34

13 2020, correct? 09:32:38

14 A. **Yeah.** 09:32:39

15 Q. There was no '727 patent in December 09:32:44

16 2020, correct? 09:32:50

17 A. **I don't remember. I don't remember** 09:32:50

18 **exactly the number of the patent.** 09:32:53

19 Q. In paragraph 4 -- did you testify in 09:32:57

20 paragraph 4 of your declaration, based on your 09:33:00

21 personal knowledge, that Syngenta attempted to 09:33:02

22 duplicate the tests in U.S. Patent 11,445,727. Is 09:33:04

27

1 that from your personal knowledge, sir? 09:33:10

2 MS. HERBERT: Objection, form. 09:33:12

3 THE WITNESS: Yeah, but the time that we 09:33:27

4 started trials, 2020, 2021, I don't remember exactly 09:33:28

5 the name of the patent -- the number of the patent, 09:33:33

6 sorry. 09:33:36

7 BY MR. FELDSTEIN: 09:33:37

8 Q. So what's your basis in paragraph 4 for 09:33:37

9 saying that Syngenta attempted to duplicate the 09:33:40

10 tests in the '727 patent, if you don't remember what 09:33:43

11 patent you looked at in December 2020? 09:33:48

12 MS. HERBERT: Objection, form and 09:33:52

13 privilege. 09:33:54

14 BY MR. FELDSTEIN: 09:33:59

15 Q. Can you answer, sir? 09:33:59

16 A. Yeah. At that time, I don't remember 09:34:01

17 exactly the number of the patent. The legal part of 09:34:04

18 Syngenta just asked me to provide the data for that. 09:34:08

19 They don't tell me the number of the patent. 09:34:13

20 Q. I'm just asking about paragraph number 4 09:34:16

21 right now of your declaration, Exhibit 1020, okay? 09:34:18

22 A. Okay. 09:34:21

1 Q. What was your basis for saying that 09:34:22

2 Syngenta attempted to duplicate the tests in the 09:34:25

3 '727 patent that you started in December 2020, when 09:34:28

4 there was no '727 patent in December of 2020? 09:34:33

5 MS. HERBERT: Objection, form and 09:34:38

6 privilege. 09:34:41

7 THE WITNESS: As I told you, I don't 09:34:52

8 remember the number of the patent at that time. I 09:34:55

9 just provided data. 09:34:58

10 BY MR. FELDSTEIN: 09:35:00

11 Q. And I'm just asking about paragraph 4, 09:35:00

12 where you had very clear testimony that Syngenta 09:35:03

13 attempted to duplicate the tests in U.S. Patent 09:35:05

14 11,445,727. And I'm just trying to ask, what was 09:35:09

15 your basis from personal knowledge for making that 09:35:13

16 statement? 09:35:16

17 MS. HERBERT: Objection, form and 09:35:17

18 privilege. 09:35:20

19 BY MR. FELDSTEIN: 09:35:22

20 Q. Let me ask a different question. Did you 09:35:22

21 have personal knowledge supporting what you said in 09:35:25

22 paragraph 4 of your declaration that Syngenta 09:35:30

29

1 attempted to duplicate the tests in U.S. Patent 09:35:31

2 11,445,727? 09:35:36

3 MS. HERBERT: Objection, form. 09:35:40

4 THE WITNESS: Sorry, I don't remember. 09:35:56

5 BY MR. FELDSTEIN: 09:35:58

6 Q. You don't know whether or not you had 09:35:58

7 personal knowledge supporting paragraph 4 of your 09:36:01

8 declaration when you signed it in January of this 09:36:04

9 year, is that correct? 09:36:11

10 A. Yes, I recognize it. 09:36:13

11 Q. So, I'm sorry, I don't understand how 09:36:33

12 that's a response to my question, so I'm going to 09:36:42

13 back up, if you don't mind. 09:36:44

14 A. Okay. 09:36:46

15 Q. Referring to paragraph 4 of your 09:36:46

16 declaration. 09:36:49

17 A. Okay. 09:36:50

18 Q. Did you have personal knowledge 09:36:51

19 supporting that statement when you signed the 09:36:53

20 declaration in January of this year? 09:36:57

21 MS. HERBERT: Objection, form. 09:37:00

22 THE WITNESS: Can you ask me again in 09:37:37

30

1 another way, please? 09:37:39

2 BY MR. FELDSTEIN: 09:37:40

3 Q. I'll try to break it up into steps, okay? 09:37:42

4 A. Okay. 09:37:46

5 Q. You signed your declaration, Exhibit 09:37:46

6 1020, in January of this year, correct? 09:37:50

7 A. Correct. 09:37:51

8 Q. At that time, did you have personal 09:37:52

9 knowledge supporting the statements you make in 09:37:55

10 paragraph 4 of Exhibit 1020? 09:37:59

11 A. I don't remember exactly the number of 09:38:03

12 the patent. 09:38:09

13 Q. The court reporter wrote, I don't 09:38:09

14 remember exactly the number of the patent. Is that 09:38:13

15 what you answered? 09:38:15

16 A. Yeah. 09:38:16

17 Q. And so did you or did you not have 09:38:17

18 personal knowledge supporting the statements in 09:38:20

19 paragraph 4 of Exhibit 1020? 09:38:23

20 MS. HERBERT: Objection, form. 09:38:25

21 THE WITNESS: No, I don't. I don't 09:38:39

22 remember. 09:38:41

31

1 BY MR. FELDSTEIN: 09:38:42

2 Q. Okay. Can we go on to -- well, actually, 09:38:42

3 we'll stay there for another minute. What do you -- 09:38:55

4 what specific tests in the '727 patent did you 09:39:03

5 attempt to duplicate? 09:39:07

6 MS. HERBERT: Objection, form. 09:39:13

7 BY MR. FELDSTEIN: 09:39:21

8 Q. I'm referring to paragraph 4 of your 09:39:21

9 declaration. 09:39:23

10 A. Okay. 09:39:24

11 Q. What specific tests did you -- excuse me. 09:39:24

12 What specific tests in the '727 patent did you 09:39:28

13 attempt to duplicate? 09:39:31

14 A. The tests to confirm synergy or not -- 09:39:33

15 the field tests to confirm synergy or not. 09:39:49

16 Q. Were there specific tests in the '727 09:39:53

17 patent that you're referring to? 09:39:56

18 A. Yeah, I just followed the instructions of 09:39:57

19 the attorney that told me to provide data 09:40:13

20 considering the possible mixtures and to verify 09:40:18

21 synergy or not. This is what I did. 09:40:22

22 Q. And what mixtures did your attorney tell 09:40:24

32

1 you to gather? 09:40:27

2 MS. HERBERT: Objection, privilege. And 09:40:35

3 at this point, I instruct you to answer generally, 09:40:37

4 not specifically. If you cannot, then I'll instruct 09:40:39

5 you not to answer. But generally, if you can, 09:40:43

6 please. 09:40:45

7 THE WITNESS: Okay. The mixture with 09:40:46

8 benzovindiflupyr, prothioconazole, and mancozeb. 09:41:13

9 Q. Were you directed to consider any other 09:41:13

10 mixtures -- 09:41:13

11 (Discussion off the record.) 09:41:13

12 THE WITNESS: Sorry, the mixture with 09:41:10

13 benzovindiflupyr, prothioconazole, and mancozeb. 09:41:13

14 MR. FELDSTEIN: Off the record for a 09:41:35

15 second. 09:41:35

16 THE VIDEOGRAPHER: The time is 9:42 p.m. 09:41:35

17 We're going off the record. 09:41:39

18 (Discussion off the record.) 09:44:40

19 THE VIDEOGRAPHER: The time is 9:45 a.m. 09:44:40

20 We're back on the record. 09:44:43

21 BY MR. FELDSTEIN: 09:44:45

22 Q. Other than mixtures with 09:44:47

33

1 benzovindiflupyr, prothioconazole, and mancozeb, 09:44:49

2 were you directed by anyone to test any other 09:44:56

3 mixtures? 09:44:59

4 **A. No.** 09:44:59

5 Q. In the field trials that are described in 09:45:00

6 Exhibit 1020, did you use any other fungicides? 09:45:04

7 **A. No.** 09:45:09

8 Q. The field trials were both limited to 09:45:13

9 benzovindiflupyr, prothioconazole, and mancozeb, is 09:45:18

10 that correct? 09:45:26

11 **A. That's correct.** 09:45:26

12 Q. And how did you determine the amounts of 09:45:27

13 each component to use in your field trials? 09:45:28

14 **A. We received it from our legal team, a 09:45:32**

15 **range of rates to test it in the field.** 09:45:40

16 Q. So that wasn't based on any decision you 09:45:43

17 made personally, is that correct? 09:45:45

18 **A. No, it's related to the range that we 09:45:46**

19 **received. I just follow it.** 09:45:51

20 Q. From counsel, correct? 09:45:53

21 **A. Yeah. From the attorneys, yeah.** 09:45:55

22 Q. And so you haven't checked to see whether 09:45:57

34

1 any of the tests you did, whether or not they 09:46:01

2 correspond to anything in the '727 patent, is that 09:46:04

3 correct? 09:46:12

4 MS. HERBERT: Objection, form. 09:46:12

5 THE WITNESS: Can you repeat the 09:46:15

6 question, please? 09:46:16

7 BY MR. FELDSTEIN: 09:46:17

8 Q. Have you done anything to check whether 09:46:17

9 the tests you did, as reported in Exhibit 1020, 09:46:19

10 correspond to any tests disclosed or any 09:46:22

11 combinations claimed in the '727 patent? 09:46:27

12 A. No. 09:46:30

13 Q. And so back to paragraph 4 of your 09:46:30

14 declaration, where you're saying Syngenta attempted 09:46:35

15 to duplicate, that's inclusive of Syngenta counsel, 09:46:38

16 is that correct? 09:46:43

17 A. I don't know, because as I told you, I 09:46:44

18 didn't remember what exactly is the number of the 09:47:05

19 patent, to duplicate it. I just followed the range 09:47:10

20 that the -- the legal part of Syngenta showed me to 09:47:15

21 provide data. 09:47:18

22 Q. You followed Syngenta legal counsel for 09:47:19

35

1 the components to use, correct? 09:47:22

2 A. Correct. 09:47:23

3 Q. And you followed Syngenta legal counsel 09:47:24

4 for the amounts of the components to use, correct? 09:47:27

5 A. Correct. 09:47:29

6 Q. Do you have any other instructions from 09:47:30

7 Syngenta counsel that you implemented in the field 09:47:32

8 trials that are described in Exhibit 1020? 09:47:36

9 A. No. 09:47:38

10 Q. Okay. Can we turn to paragraph 5 of your 09:47:38

11 declaration, Exhibit 1020? 09:47:55

12 A. Okay. 09:47:57

13 Q. It says, "a field test was prepared with 09:47:58

14 the following materials." Is that correct? 09:48:01

15 A. Yeah. 09:48:07

16 Q. Was it you who prepared that field test? 09:48:08

17 A. Yes, I'm responsible for that. 09:48:11

18 Q. What are the three items listed under 09:48:12

19 varieties? 09:48:19

20 A. You mean the reason for -- 09:48:19

21 Q. What are they? 09:48:21

22 A. They are soybean varieties that are 09:48:22

36

1 commercial used in Brazil. 09:48:30

2 Q. Each of those three codes designates a 09:48:31

3 different soybean variety, is that correct? 09:48:34

A. Yes .

5 Q. Did you select these soybean varieties 09:48:36

6 for the test? 09:48:38

A. Yes, we selected.

8 Q. We or you? 09:48:41

A. My team. Me and my team. 09:48:42

10 Q. Why were each of these varieties selected 09:48:47

```
11 for this field trial?                                09:48:50
```

12 MS. HERBERT: Objection, privilege. And 09:48:52

```
13 I instruct you to answer generally. 09:48:53
```

14 THE WITNESS: Okay. As we implement the 09:49:02

```
15 trials in different locations, we normally use the 09:49:04
```

16 most used variety in each regions. So those are the 09:49:07

17 commercial varieties and most used at that regions. 09:49:13

18 BY MR. FELDSTEIN: 09:49:18

19 Q. Right. 09:49:18

20 **A.** **No problem.** 09:49:20

21 Q. Was your counsel involved in the decision 09:49:21

22 on which varieties to use? 09:49:25

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[illegible]

2 Q. Okay. What's the difference between the 09:49:26
3 varieties? 09:49:33

4	A. The first one is from Monsanto. IPRO	09:49:33
5	means tolerance to caterpillar. The NS is from	09:49:42
6	Nidera. That is the partnership of Syngenta Seeds	09:49:49
7	Corporation. And also NA is also from Nidera. And	09:49:54
8	RR means only tolerance to herbicide. It's not	09:50:01
9	tolerant to caterpillar. So here we have three	09:50:04
10	different genetics in terms of soybean varieties to	09:50:09
11	be more representative in our trials.	09:50:14

12	Q.	The NA is a Syngenta variety, is that	09:50:15
13		correct?	09:50:19

14 A. No, it's not Syngenta. It's from Nidera. 09:50:19

15 Q. Nidera? 09:50:22

A. Nidera.

17 Q. That's the name of a company? 09:50:24

[illegible]

19 Q. Can you explain what you have written 09:50:28
20 under trial design? 09:50:31

21 A. Okay. Regarding trial design. This is 09:50:32
22 the normal way that we implemented fungicide trials. 09:50:39

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1 We used complete randomized blocks with four 09:50:43
2 replications for treatment. And for each 09:50:50
3 replication, we have a plot size that contains six 09:50:53
4 rows per -- six meters, that is in total 18 meters 09:50:59
5 squares. This is the plot size for each -- each 09:51:06
6 replication. 09:51:10

7 Q. So every unique application has a plot 09:51:11
8 size of 18 meters square? 09:51:16

9 A. Yeah. 09:51:17

10 Q. So what you label later as A1 through 10, 09:51:18
11 each of those had an 18 meter square area? 09:51:25

12 A. 18 meters multiplied by four reps. 09:51:28
13 Multiplied versus four locations. 09:51:35

14 Q. So at each location, each of A1 through 09:51:39
15 10 had four 18 meter square areas? 09:51:45

16 A. Exactly. 09:51:49

17 Q. And then you repeated that at each of the 09:51:50
18 four locations? 09:51:52

19 A. Exactly. 09:51:53

20 Q. And can you explain or identify what you 09:51:54
21 have under equipment? 09:52:01

22 A. Okay. The equipment that we use, it's a 09:52:01

39

1 **backpack. Considering 150 liters per hectare that** 09:52:08

2 **tries to simulate the farmer conditions in Brazil.** 09:52:17

3 **Flat nozzles also is the nozzle that most of the** 09:52:22

4 **farmer uses for soybean disease in Brazil. So** 09:52:25

5 **regarding the equipment, we tried to simulate as** 09:52:30

6 **much as possible the farmer conditions in Brazil.** 09:52:33

7 Q. What does 150 liter per hectare mean, in 09:52:36

8 terms of equipment? Is that the spray rate that 09:52:40

9 comes out of the backpack? 09:52:42

10 A. Yeah, this is the rate. This is the 09:52:43

11 **rate. This is the 150 liters to apply one hectare.** 09:52:48

12 **So you should calculate how much liters you need to** 09:52:54

13 **apply the plot size, you know.** 09:52:59

14 Q. What's 30 pounds mean? 09:53:02

15 A. The pressure. 09:53:04

16 Q. The pressure? 09:53:07

17 A. The pressure for the application. 09:53:08

18 Q. How is that chosen? 09:53:10

19 A. Huh? 09:53:11

20 Q. How is that chosen? 09:53:12

21 A. It's an average of the farmer use in 09:53:14

22 **Brazil.** 09:53:18

40

1 Q. To your knowledge, are any of the 09:53:19
2 conditions in paragraph 5 duplicating tests in the 09:53:25
3 '727 patent? 09:53:31

4 A. No, this is the normal way that we do 09:53:32
5 fungicide trials. It's not related to the patent. 09:53:37

6 Q. Can you turn to the next page, page 3 of 09:53:41
7 your declaration, Exhibit 1020? You have 09:53:45
8 application timing. Can you explain what each of A, 09:53:56
9 B, and C are in your declaration timing? 09:53:58

10 A. Okay. Here, we also tried to simulate, 09:54:00
11 as much as position, what the farmers do to soybean 09:54:10
12 control -- to soybean disease control in Brazil. So 09:54:16
13 application letter A is the first application that 09:54:17
14 normally farmers do in Brazil. We start to spray 09:54:20
15 fungicides at preclosure. That is an average 42 09:54:23
16 days after the emergence of soya. 09:54:29

17 Q. After the emergence of what? 09:54:33

18 A. Of the soybean. And then we repeat the 09:54:35
19 application 40 days later, so we consider three 09:54:39
20 sprays for each treatment. 09:54:45

21 Q. And is that, again, standard Brazilian 09:54:46
22 farmer, as opposed to trying to duplicate the '727 09:54:50

41

1 patent, is that correct? 09:54:53

2 MS. HERBERT: Objection, form. 09:54:54

3 THE WITNESS: Again, this is the -- we 09:55:02

4 tried to simulate the average of number of 09:55:02

5 application that the farmers do in Brazil. It is 09:55:05

6 not related to the patent. In Brazil, some farmers 09:55:07

7 do up to four fungicide applications in regions. 09:55:10

8 And other regions, less than this. But in the 09:55:14

9 average, three applications represents the average 09:55:19

10 of fungicide spray for soybeans. 09:55:21

11 BY MR. FELDSTEIN: 09:55:25

12 Q. Was the trial that's described in 09:55:25

13 paragraph -- were the trials described in Exhibit 09:55:27

14 1020 done solely for the purpose related to the '727 09:55:30

15 patent, or was it also for general business reasons? 09:55:37

16 MS. HERBERT: Objections, form and 09:55:44

17 privilege. 09:55:46

18 THE WITNESS: Can you ask me again a 09:55:49

19 different way, please? 09:55:51

20 BY MR. FELDSTEIN: 09:55:52

21 Q. I'll talk for a second to try to give you 09:55:53

22 context for what I'm asking. 09:55:54

42

A. Okay.

2 Q. You've referred a couple times to trying 09:55:56
3 to duplicate conditions of the Brazilian farmer, 09:55:59
4 correct? 09:56:01

A. Correct.

6 Q. And I'm wondering if you were trying to 09:56:02
7 generate data for the purpose of farming in Brazil, 09:56:04
8 generally, as opposed to just generating data with 09:56:10
9 respect to the '727 patent? 09:56:16

10 MS. HERBERT: Objection. 09:56:19

11	THE WITNESS: No, the way that we did	09:56:23
12	those trials, not related to the patent. It's	09:56:24
13	related to the normal practice, farmer practice in	09:56:27
14	Brazil. The methodology, the number of	09:56:33
15	applications, and everything.	09:56:35

16 BY MR. FELDSTEIN: 09:56:36

17 Q. So was one purpose of the trials that are 09:56:36
18 describe in Exhibit 1020 just to generate data 09:56:40
19 related to fungicide use in Brazil? 09:56:44

20 MS. HERBERT: Objection, asked and 09:56:47
21 answered and privilege. 09:56:48

22 THE WITNESS: No, the data that we 09:56:51

43

1 generated is to confirm if there is synergy or not. 09:56:57

2 But the way that we did the trial is following the 09:57:02

3 farmer practice. 09:57:06

4 BY MR. FELDSTEIN: 09:57:07

5 Q. The assessments. Can you explain what we 09:57:12

6 have under each of the assessments? 09:57:16

7 A. Okay. For the assessment, we normally 09:57:17

8 assess the disease severity in every seven days 09:57:22

9 interval. We collected soybean leaves and assessed 09:57:28

10 the severity of that in each application. We also 09:57:33

11 assess phytotoxicity, 7 and 14 days after all 09:57:36

12 applications. Defoliation and also yield. 09:57:42

13 Q. So how many times was severity assessed 09:57:45

14 for each trial? 09:57:51

15 A. Eight assessments, in total. 09:57:59

16 Q. And you have the letters capital D, 09:58:04

17 capital A, capital A, capital A, underlined in 09:58:08

18 severity. 09:58:14

19 A. Uh-huh. 09:58:15

20 Q. What does that mean? 09:58:15

21 A. It means days after application A. 09:58:16

22 Q. Days after application A. I see. 09:58:19

44

1 Thanks. 09:58:22

2 A. So you got it? 09:58:23

3 Q. Yeah. 09:58:25

4 A. Thank you. 09:58:26

5 Q. And the phytotoxicity is 7 and 14 days 09:58:27

6 after application C? 09:58:34

7 A. For all applications, after each 09:58:36

8 applications, 7 and 14 days after each applications. 09:58:39

9 Q. So how many times was phytotoxicity 09:58:42

10 evaluated for each trial? 09:58:45

11 A. In this case, we have three applications. 09:58:48

12 Two assessments after each application. So in 09:58:51

13 total, six -- six times. 09:58:54

14 Q. And defoliation, how and when is that 09:58:55

15 measured? 09:58:59

16 A. Only in the end of the cycle, when the 09:58:59

17 untreated plotted reach 80 percent of defoliation. 09:59:03

18 Q. And can you explain how the defoliation 09:59:09

19 measurement is done and what it corresponds to? 09:59:13

20 A. Defoliation is highly related to the 09:59:15

21 disease pressure. So when the disease pressure is 09:59:23

22 going very high, the soybean defoliated. And then 09:59:26

45

1 **you can also assess the performance of the fungicide** 09:59:32

2 **using defoliation as a parameter.** 09:59:35

3 Q. And you may have answered this, but I 09:59:41

4 **didn't quite catch it. Defoliation is measured when** 09:59:43

5 **compared to the applications?** 09:59:46

6 A. **Just in the end of the cycle. In this** 09:59:49

7 **case, it's going to be close to 49 days after the** 09:59:51

8 **emergence -- after the application A, the end of the** 09:59:56

9 **soybean cycle.** 10:00:00

10 Q. And yield, what is yield? 10:00:01

11 A. **Productivity.** 10:00:04

12 Q. What is yield measuring? 10:00:05

13 A. **We have a machine that harvests the plant** 10:00:07

14 **for each plot size. And then we calculate and** 10:00:14

15 **extrapolate the grain -- the weight of the grain to** 10:00:19

16 **kilograms per hectare.** 10:00:27

17 Q. And why is yield an assessment that you 10:00:28

18 **did for this trial?** 10:00:31

19 A. **Because this is the normal way that we** 10:00:32

20 **assess fungicide in Brazil. This is the regular** 10:00:34

21 **way.** 10:00:37

22 Q. Is that the same answer for why you 10:00:37

46

1 assessed severity of phytotoxicity and defoliation? 10:00:39

2 **A. Yeah.** 10:00:43

3 Q. And you don't have listed as an 10:00:44

4 assessment, percent control. That's not an 10:00:49

5 assessment you did or at least not planned, is that 10:00:53

6 correct? 10:00:56

7 **A. The presentation of control is the** 10:00:56

8 **results of each severity assessment.** 10:01:02

9 Q. So you had eight severity assessments for 10:01:10

10 each area, and then you did that for four areas, so 10:01:23

11 it was 32 severity assessments, correct? 10:01:29

12 **A. Correct.** 10:01:33

13 Q. And then control is just a single -- 10:01:33

14 percent control is just a single number, correct? 10:01:35

15 Is that correct? 10:01:39

16 **A. It's the average of all the assessments.** 10:01:39

17 Q. So you averaged together 32 assessments? 10:01:42

18 **A. Yeah.** 10:01:50

19 Q. To get the control number? 10:01:50

20 **A. Yeah.** 10:01:52

21 Q. And you personally did that math, is that 10:01:53

22 correct? 10:01:56

47

1 **A. Yes, this is the normal way that we** 10:01:56
2 **calculate presentation of control for fungicides in** 10:01:59
3 **our trials.** 10:02:02

4 **Q. And I'm just confirming. You personally** 10:02:02
5 **did the calculation from the 32 data points to get** 10:02:05
6 **the percent control, is that correct?** 10:02:08

7 **A. Me and my team.** 10:02:10

8 **Q. At least you personally did it. You did** 10:02:11
9 **it on a calculator or Excel? How did you do it?** 10:02:16

10 **A. Yeah, I did it in Excel.** 10:02:20

11 **Q. Okay. And when you're measuring percent** 10:02:23
12 **control, what's the denominator there, the** 10:02:39
13 **reference?** 10:02:43

14 **A. In the end of all the severity** 10:02:49
15 **assessment, we are able to view the area under** 10:02:53
16 **disease pressure. Taking this value, we calculate** 10:02:57
17 **using the Abbott formula, the presentation of** 10:03:02
18 **control. That is a result of each treatment minus** 10:03:06
19 **untreated -- divided by untreated, and multiplied** 10:03:14
20 **versus 100. This is the formula, Abbott formula to** 10:03:21
21 **calculate percentage of control.** 10:03:25

22 **Q. Are you saying Abbott formula?** 10:03:28

48

1 A. Abbott, yeah. 10:03:29

2 Q. Okay. And did you only apply the Abbott 10:03:33

3 formula to the 32 data points combined? Well, let 10:03:37

4 me ask you differently. Did you do the Abbott 10:03:42

5 formula to measure percent control also at each of 10:03:45

6 the eight different time points? 10:03:50

A. **Yes.**

8 Q. What did that data show? 10:03:53

A. Compared to what? 10:03:55

10 Q. What did that data at each of the eight 10:03:58

```
11 time points show for control for mixtures A1 through 10:04:01
```

12 10? 10:04:08

13 A. I don't remember exactly, but we normally 10:04:08

14 consider all the assessments to define the 10:04:16

15 percentage of control. Not only one assess -- one 10:04:19

16 **assessment.** 10:04:22

17 Q. And you don't remember what assessments 10:04:23

18 at each of the time points showed in terms of 10:04:26

19 percent control for tests A1 through 10, is that 10:04:29

20 correct? 10:04:36

21 A. I don't remember exactly the values -- 10:04:36

22 the values for each assessment. 10:04:39

49

1 Q. Do you remember approximately the values 10:04:41
2 for the assessments? 10:04:42

3 A. No. 10:04:44

4 Q. Do you remember any trends in that data? 10:04:44

5 A. Could be close to the -- to the final 10:04:48
6 data. 10:04:50

7 Q. Do you remember that? 10:04:51

8 A. Not exactly. 10:04:52

9 Q. And did you do the same math for the 10:04:57
10 tests in table 5, B1 through 10? 10:05:06

11 A. Yeah, the same methods. 10:05:10

12 Q. And for B1 through B10 in table 5 of your 10:05:11
13 declaration, you calculated using the Abbott formula 10:05:17
14 percent control at each of the eight time points 10:05:20
15 where severity was measured? 10:05:23

16 A. Yeah. 10:05:24

17 Q. And you don't remember what that data 10:05:25
18 showed? 10:05:27

19 A. I don't. 10:05:28

20 Q. Okay. Do you recall what the 10:05:28
21 phytotoxicity data showed for examples A1 through 10:05:42
22 A10? 10:05:48

50

1 **A. Do you mean the level of phytotoxicity** 10:05:49

2 **that we find?** 10:05:56

3 **Q. You did a phytotoxicity assessment?** 10:05:58

4 **A. Uh-huh.** 10:06:00

5 **Q. At six different time points?** 10:06:02

6 **A. Yeah.** 10:06:03

7 **Q. For each application, correct? And I'm** 10:06:04

8 **asking if you recall what that assessment showed?** 10:06:07

9 **A. No, I remember that no significant** 10:06:11

10 **phytotoxicity we find for all those treatments.** 10:06:18

11 **Q. Do you recall whether there were any** 10:06:23

12 **differences in the phytotoxicity among examples A1** 10:06:37

13 **through A10 at any of the time points?** 10:06:42

14 **A. I don't remember exactly.** 10:06:45

15 **Q. Do you remember generally?** 10:06:47

16 **A. No big difference among them.** 10:06:49

17 **Q. Do you recall whether there were any** 10:06:51

18 **differences in the phytotoxicity among examples B1** 10:06:56

19 **through 10 at any time points?** 10:07:00

20 **A. It's pretty much the same -- the same** 10:07:04

21 **picture from the A1 to A -- A1 to A -- sorry, to** 10:07:10

22 **A10. But I mean, no big difference in terms of** 10:07:19

51

1 **phytotoxicity.** 10:07:21

2 Q. So the individual components and the 10:07:23
3 combined components, they had similar phytotoxicity 10:07:26
4 in A1 through 10 and B1 through 10? 10:07:30

5 A. **Pretty similar.** 10:07:34

6 Q. In terms of defoliation, what did the 10:07:35
7 data show for examples 1 through 10, A1 through 10? 10:07:41

8 A. **As I said, defoliation is highly** 10:07:48
9 **correlated with the presentation of control. So** 10:07:56
10 **what I mean, the best treatments in terms of** 10:07:59
11 **presentation of control showed less defoliation in** 10:08:04
12 **the field. But I don't remember exactly the values.** 10:08:08

13 Q. So looking at, in table 2, the highest 10:08:11
14 percent control is A8, is that correct, 79? 10:08:20

15 A. **Yeah.** 10:08:26

16 Q. And so that example, A8, also had the 10:08:27
17 best results in terms of defoliation? 10:08:31

18 A. **Exactly.** 10:08:33

19 Q. And just to be clear for defoliation, the 10:08:36
20 better the result is lower defoliation? 10:08:37

21 A. **Lower defoliation, yeah.** 10:08:39

22 Q. Do you know how much better example A8 10:08:41

52

1 was in terms of percent defoliation compared to any 10:08:45

2 of the other A1 through A10? 10:08:49

3 A. I don't remember exactly. 10:08:52

4 Q. And if we look at table 5 in your report. 10:08:54

5 A. Okay. 10:09:05

6 Q. B9 and B10 are the best in terms of 10:09:06

7 percent control, correct? 10:09:11

8 A. Correct. 10:09:12

9 Q. Did they also have the best data in terms 10:09:13

10 of defoliation compared to the other B examples? 10:09:15

11 A. Yeah, you are right. 10:09:20

12 Q. And do you know how much better B9 and 10:09:20

13 B10 were in terms of defoliation compared to the 10:09:24

14 other examples, B1 through B10? 10:09:27

15 A. I cannot answer it, because I don't 10:09:30

16 remember the values. 10:09:33

17 Q. Okay. But it's something that is in the 10:09:33

18 field reports, is that correct? 10:09:36

19 A. Yeah. 10:09:37

20 Q. In terms of yield, do you remember what 10:09:37

21 the yield data showed for examples A1 through 10? 10:09:40

22 A. Also, you had a good correlation with 10:09:45

1 **presentation on control. The best treatment in** 10:09:48
2 **terms of control showed less defoliation, and also** 10:09:52
3 **better yield response.** 10:09:54

4 Q. So in table 2, treatment A8 had the 10:09:56
5 highest yield, is that correct? 10:10:01

6 A. **I cannot answer it. I don't remember,** 10:10:05
7 **but probably yes.** 10:10:09

8 Q. And do you remember how much better the 10:10:10
9 yield was for A8 compared to any of the other 10:10:14
10 examples, A1 through A10? 10:10:17

11 A. **I don't remember.** 10:10:19

12 Q. And is the same true in table 5, that B9 10:10:20
13 and B10 provided the highest yield? 10:10:25

14 A. **Probably, but I don't remember exactly** 10:10:31
15 **the values.** 10:10:34

16 Q. And for both the experiments A1 through 10:10:35
17 10 and the experiments B1 through B10, the yield 10:10:41
18 data is in the field reports, is that correct? 10:10:44

19 A. **Correct.** 10:10:46

20 Q. On paragraph 6 of your declaration, 10:10:46
21 Exhibit 1020, you have table 1, correct? 10:11:13

22 A. **Table 1, yeah.** 10:11:16

1 Q. And you've already referred to that you 10:11:22
2 did the first set of experiments in four different 10:11:24
3 areas in Brazil, correct? 10:11:28

4 A. Correct. 10:11:30

5 Q. What's the rationale for combining 10:11:30
6 together data from different variety types? 10:11:32

7 MS. HERBERT: Objection, form. 10:11:36

8 BY MR. FELDSTEIN: 10:11:41

9 Q. Well, let me back up. Am I correct, 10:11:41
10 based on what you said earlier, that the data that 10:11:43
11 you have in table 3, for example, is based on 10:11:46
12 combining data from the four different areas you 10:11:51
13 have in table 1, is that correct? 10:11:56

14 A. Yeah, you are correct. 10:11:58

15 Q. What is the rationale, if any, for 10:12:01
16 combining data from three different varieties in 10:12:04
17 four different plots? 10:12:08

18 A. The rationale is to be more robust in 10:12:11
19 terms of conclusiveness, because we are combining 10:12:17
20 different situations, different soybean disease 10:12:21
21 pressure. So this is the normal way that we run 10:12:26
22 fungicide trials in Brazil for Syngenta. 10:12:31

55

1 Q. Was there any variability in the data 10:12:33
2 between the different variety types? 10:12:38

3 A. Yes. 10:12:40

4 Q. What kind of variability was there 10:12:42
5 between the different variety types? 10:12:44

6 A. In the end, we have different disease 10:12:46
7 pressure considering different varieties, but it's 10:12:52
8 not only related to varieties. It's more related to 10:12:56
9 the location, and the weather conditions there. 10:12:59

10 Q. How much variety -- excuse me, how much 10:13:02
11 variability in percent control was there among the 10:13:06
12 four areas? 10:13:10

13 A. I don't remember exactly the range. But 10:13:14
14 of course, we have difference in terms of severity 10:13:20
15 for each location. 10:13:23

16 Q. Do you remember approximately the range 10:13:24
17 of variability in percent control between the four 10:13:25
18 locations? 10:13:30

19 A. I would say around 10, 20 percent of 10:13:31
20 disease severity. 10:13:36

21 Q. Does that correspond to 10 to 20 percent 10:13:37
22 in disease control or is it different? 10:13:41

56

A. It is different. 10:13:43

2 Q. And so what was the variability in 10:13:44

3 percent control among the four locations? 10:13:46

4 A. It could be -- it could be 10 to 20, but 10:13:50

5 it's hard to predict. It's hard to correlate it. 10:13:54

6 Q. And for the second trial that you did, 10:13:58

7 the experiments, that was also four different areas, 10:14:02

8 correct? 10:14:05

9 A. Yeah.

10:14:05

10 Q. And also using, in that case, four 10:14:06

11 different varieties, correct? 10:14:10

A. Correct.

13 Q. And do you know what the variability was 10:14:12

14 in the percent control among those four areas? 10:14:14

15 A. I don't know. I don't remember exact 10:14:17

16 values, but I would say the range could be the same. 10:14:24

17 **10 to 20 percent of severity.** 10:14:28

18 Q. Returning where we were in table 1. The 10:14:33

19 four areas have a common target, correct? Table 1 10:14:38

20 on page 3 of your declaration. They have a common 10:14:50

21 target. Is that correct? 10:14:53

22 **A.** Uh-huh, yeah. 10:14:54

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1 Q. And then you have a double asterisk at 10:14:56
2 the bottom that say, trial 4 contained e. Piffusa, 10:14:58
3 p-i-f-f-u-s-a, as an additional targets? 10:15:05

4 A. Yeah. 10:15:06

5 Q. Which is trial 4? 10:15:07

6 A. Trial 4 were implemented in the location 10:15:09
7 where we have rust severity that is Phakopsora 10:15:18
8 pachyrhizi, and also E. Piffusa that is another 10:15:27
9 disease. 10:15:29

10 Q. Trial 4 is the last one in table 1, 10:15:29
11 correct? 10:15:33

12 A. Yeah. 10:15:33

13 Q. And what was -- what was the rationale 10:15:35
14 for using an area that had two different targets? 10:15:45

15 A. There is no rationale before. It's just 10:15:50
16 happening. We don't -- we cannot predict if we will 10:15:54
17 find only one disease in our trial. So in this 10:16:01
18 case, we are aiming for Phakopsora pachyrhizi, but 10:16:04
19 also, another disease occurs in the trial. 10:16:11

20 Q. And did you attempt at all to separately 10:16:13
21 analyze the effects on those two targets? 10:16:15

22 A. Exactly. We can do this. We can assess 10:16:19

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1 **separately those diseases.** 10:16:23

2 Q. And did you do that for the tests A1 10:16:24

3 through A10. Did you separately assess efficacy for 10:16:26

4 the two different targets? 10:16:31

5 MS. HERBERT: Form. Objection, form. 10:16:33

6 THE WITNESS: Yeah. 10:16:35

7 BY MR. FELDSTEIN: 10:16:37

8 Q. And what did you find in terms of percent 10:16:37

9 control different between the two targets? 10:16:40

10 A. **I don't remember exactly values.** 10:16:42

11 Q. Do you remember approximately? 10:16:44

12 A. **No, because that is E. Piffusa. It's** 10:16:45

13 **more easy to control. So it's easier to control.** 10:16:53

14 **So probably the level of control for that is higher** 10:16:59

15 **than for Phakopsora pachyrhizi.** 10:17:03

16 Q. Does your field report contain analysis 10:17:05

17 for the different targets? 10:17:08

18 A. **Yeah.** 10:17:09

19 Q. So paragraph 7 of your report, Exhibit 10:17:10

20 1020, says, "treatments were applied as described 10:17:39

21 from table 2 below. Solo applications A1 through A3 10:17:41

22 and A5 through A7 were used to calculate synergy." 10:17:46

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1 Is that correct? 10:17:51

2 A. Yes, correct. 10:17:51

3 Q. Did you personally do the Colby 10:17:52

4 calculations? 10:18:01

5 A. Yes, I did. Me and my team. 10:18:01

6 Q. And you did the Colby calculations for 10:18:04

7 averaged severity data, correct? 10:18:11

8 A. Yeah, and also for each assessment. 10:18:15

9 Q. So for each of the eight assessments, you 10:18:18

10 did a separate Colby calculation? 10:18:23

11 A. Yes. 10:18:28

12 Q. And what were the results of the Colby 10:18:28

13 calculations for each of the separate assessments, 10:18:31

14 as compared to the results for the average? 10:18:34

15 A. I don't remember exact values, but pretty 10:18:37

16 close, pretty similar. 10:18:40

17 Q. Are those exact values in the field 10:18:42

18 reports? 10:18:45

19 A. Yes. 10:18:45

20 MS. HERBERT: David, is now a good time 10:18:59

21 to take a little break for a few minutes? 10:19:01

22 MR. FELDSTEIN: Give me one second. 10:19:07

60

1 Sure. We can break now. Go off the record. 10:19:13

2 THE VIDEOGRAPHER: The time is 10:19 a.m. 10:19:16

3 We're going off the record. 10:19:19

4 (Recess.) 10:19:19

5 THE VIDEOGRAPHER: The time is 10:26 10:25:56

6 a.m., and we're back on the record. 10:25:57

7 BY MR. FELDSTEIN: 10:26:00

8 Q. Sir, I wanted to go back a little bit to 10:26:00

9 the calculation you did to determine percent 10:26:03

10 control. 10:26:07

11 A. Okay. 10:26:07

12 Q. You didn't include -- do you call that 10:26:08

13 the Abbott calculation, is that correct? 10:26:10

14 A. Yeah. 10:26:12

15 Q. You didn't include that calculation in 10:26:13

16 your report, correct? 10:26:15

17 A. In this declaration, no. But in our 10:26:17

18 field book, we have it. 10:26:25

19 Q. And I didn't quite follow how you get 10:26:27

20 from severity to control. Severity, the lower the 10:26:31

21 number, the better, correct? 10:26:37

22 A. Yeah. 10:26:38

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1 Q. And percent control, the higher the 10:26:39

2 number, the better, correct? 10:26:40

3 A. The opposite, yeah. 10:26:42

4 Q. So can you tell me again how you go from 10:26:43

5 severity to percent control? 10:26:45

6 A. Yeah. If I can't design, it's going to 10:26:51

7 be better -- 10:26:54

8 Q. If you want to write on your declaration, 10:26:55

9 that's fine. 10:26:58

10 A. Okay. Here we have the percentage of 10:26:59

11 severity, and here we have the days after each 10:27:42

12 application. So let's suppose to have occurred for 10:27:45

13 the untreated. And then we have a product A here as 10:27:48

14 an example. 10:28:00

15 So the disease curve for the product, of 10:28:02

16 course, is lower than untreated. So we calculated 10:28:06

17 the area under the curve for each treatment, okay? 10:28:12

18 And then we find a value of each one. So then for 10:28:18

19 the Abbott, we find a value for the untreated, less 10:28:34

20 the value for the treatment, for example, here 10:28:42

21 product A, divided for the value for the untreated. 10:28:47

22 Multiply versus 100. This is the presentation of 10:28:51

1	control.	10:28:56
2	Q. So it's not just merely using the percent	10:28:56
3	severity value at each time point. You need to	10:29:02
4	calculate the area under the curve?	10:29:06
5	A. Yeah.	10:29:07
6	Q. And where is that area under the curve	10:29:07
7	data?	10:29:10
8	A. In our field book.	10:29:10
9	Q. And you personally calculated the area	10:29:13
10	under the curve data?	10:29:15
11	A. Yeah.	10:29:17
12	Q. And how did you calculate area under the	10:29:17
13	curve data for discrete data points?	10:29:20
14	A. How, you mean?	10:29:23
15	Q. Yeah.	10:29:24
16	A. We used a program that calculates it for	10:29:26
17	us. We insert all the data for each assessment, and	10:29:29
18	then the program show us the value.	10:29:33
19	Q. What program is that?	10:29:36
20	A. I don't remember. I don't remember	10:29:38
21	exactly the name of the program, but we can also do	10:29:49
22	this using a simple formula in Excel.	10:29:51

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1 Q. Did you do it using a simple formula in 10:29:54

2 Excel? 10:29:57

3 A. Yeah. 10:29:57

4 Q. You did both? 10:29:58

5 A. Both, yeah. 10:29:58

6 Q. And they came out the same? 10:29:59

7 A. Yeah, the value is the same. Is it 10:30:01

8 clear? 10:30:09

9 Q. Yeah, I understand. I appreciate it. 10:30:09

10 Thank you. You may have answered -- can you turn to 10:30:12

11 page 4 of your declaration, please? Maybe you're 10:30:50

12 there. You're there. 10:30:51

13 A. Okay. 10:30:51

14 Q. And you may have answered this in some of 10:30:51

15 the earlier questions, so I apologize. But you have 10:30:53

16 10 tests within the first trial, is that correct? 10:30:56

17 A1 through 10? Do you call them tests? Each of the 10:31:03

18 -- what do you call A1 through 10? Are they 10:31:06

19 applications? Are they experiments? 10:31:08

20 A. Here? 10:31:10

21 Q. Yeah. 10:31:11

22 A. The treatment. 10:31:11

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1 Q. Treatments. Okay, 10 treatments. You 10:31:12

2 have 10 treatments as part of this program? 10:31:14

3 A. Yeah. 10:31:17

4 Q. Okay. Can you tell me again how each of 10:31:18

5 the 10 treatments were selected? 10:31:27

6 MS. HERBERT: Objection, privilege. 10:31:31

7 THE WITNESS: As I said, we received from 10:31:38

8 our legal team a range of rates to be tested in the 10:31:40

9 field. 10:31:50

10 BY MR. FELDSTEIN: 10:31:53

11 Q. And in table A2, you've got some 10:31:58

12 application rates that are down to decimal 10:32:01

13 precision, correct? 10:32:05

14 A. Sorry, which treatment do you mean? 10:32:06

15 Q. Treatment A9, for example. 10:32:09

16 A. Okay. 10:32:11

17 Q. You have the rate defined to the first 10:32:11

18 decimal place, correct? 33.8, 7.5. You're defining 10:32:16

19 a rate to a single decimal place, correct? 10:32:25

20 A. In this case -- in this case, we use 10:32:31

21 it -- the variety mix that we have in Brazil that is 10:32:44

22 based on benzo plus prothio plus mancozeb on top of 10:32:49

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1 **it as an in-tank mix. This is the reason behind.** 10:33:01

2 Q. The premix is Elatus ERA, is that 10:33:01

3 correct? 10:33:05

4 **A. Sorry?** 10:33:05

5 Q. Is the premix sold under the name Elatus 10:33:05

6 ERA? 10:33:11

7 **A. No, this is -- the brand here is Mitrion.** 10:33:11

8 Q. Mitrion? 10:33:18

9 **A. Yeah.** 10:33:20

10 Q. Can you spell that? 10:33:20

11 **A. M-i-t-r, sorry, i-o-n.** 10:33:21

12 Q. Is that a Syngenta product? 10:33:31

13 **A. Yeah.** 10:33:33

14 Q. Can I bother you for that pen back? I'm 10:33:34

15 having trouble taking notes. I'll give it to you at 10:34:06

16 the end. It's a nice pen, though. It works a 10:34:12

17 little bit. Just not smoothly. Thank you. So A8, 10:34:16

18 all three components were mixed in the tank? 10:34:25

19 **A. Sorry, A?** 10:34:29

20 Q. Treatment A8, all three were mixed 10:34:33

21 together in a tank? 10:34:36

22 **A. Yeah, using isolated compounds.** 10:34:37

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1 Q. Why did you do both A9 and A10? 10:34:47

2 A. A9, it represented for Mitrion plus 10:34:55

3 mancozeb in-tank mix, as I said. And A10 is a ready 10:35:01

4 mix. 10:35:07

5 Q. Is a what kind of mix? 10:35:08

6 A. It's a ready mix developed by Syngenta. 10:35:09

7 Q. Ready mix? 10:35:12

8 A. Ready mix. 10:35:14

9 Q. And what product is A10? 10:35:15

10 A. There is no brand yet. It's under 10:35:19

11 development. 10:35:21

12 Q. Is there a developmental name for it? 10:35:22

13 A. I don't remember exactly the code, but 10:35:26

14 it's under development. 10:35:28

15 Q. And so why do you do both A9 and A10? 10:35:29

16 MS. HERBERT: Objection, privilege. You 10:35:49

17 may answer generally. 10:35:50

18 THE WITNESS: To verify if the result is 10:35:54

19 going to be different or not considering a tank mix 10:35:56

20 versus a ready mix. 10:36:04

21 BY MR. FELDSTEIN: 10:36:06

22 Q. And again, you're saying ready mix, 10:36:06

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1 correct? 10:36:06

2 A. A10 is a ready mix, yes. 10:36:08

3 Q. And I'm just clarifying for the court 10:36:08

4 reporter that you're saying ready mix? 10:36:11

5 A. Ready mix. 10:36:13

6 Q. Yes, thank you. Why did you want to 10:36:15

7 verify similarities or differences between a tank 10:36:20

8 mix and a ready mix? 10:36:26

9 MS. HERBERT: Objection, privilege, and 10:36:28
10 once again, you may answer generally. 10:36:30

11 THE WITNESS: Because we have the same 10:36:44
12 mixed, so the reason is to verify if the results 10:36:47
13 from the ready mix is going to be different from the 10:36:52
14 tank mix. 10:36:55

15 BY MR. FELDSTEIN: 10:36:55

16 Q. Why were you interested in determining 10:36:56
17 whether the ready mix and the tank mix were the same 10:36:57
18 or different? 10:37:00

19 MS. HERBERT: Objection, and privilege. 10:37:03

20 THE WITNESS: Because both situations can 10:37:12
21 occur in the field. 10:37:14

22 BY MR. FELDSTEIN: 10:37:17

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1 Q. For A9, how were you able to control the 10:37:18
2 rate so precisely down to 33.8 grams per hectare? 10:37:22

3 A. Because here we are using a recommended 10:37:30
4 rate of Mitrion that is 450. And when we use this 10:37:33
5 rate, it's delivered 33.8 of benzovindiflupyr plus 10:37:39
6 67.5 of prothioconazole. It's related to the 10:37:47
7 commercial recommendation. 10:37:51

8 Q. So the 33.8 is not a measured rate. It's 10:37:53
9 just a mathematically derived rate, is that correct? 10:37:57

10 A. Yeah, you are correct. 10:38:00

11 Q. Are all the rates in table 2 approximate 10:38:01
12 rates? 10:38:05

13 A. It's the most used rate for each 10:38:10
14 compound. 10:38:15

15 Q. In terms of what was actually put on to 10:38:15
16 the soybeans, are the rates exactly, for example, 10:38:19
17 for A1, 30 grams per hectare or is it approximately 10:38:23
18 30 grams per hectare? 10:38:28

19 A. It's exactly. It's exactly 30 grams per 10:38:30
20 hectare. 10:38:34

21 Q. You don't have solo applications of 10:38:35
22 benzovindiflupyr at 33.8 grams per hectare, correct? 10:38:41

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1	A. Correct.	10:38:48
2	Q. And you don't have solo application of	10:38:48
3	prothioconazole at 67.5 grams per hectare, correct?	10:38:52
4	A. Correct.	10:38:57
5	Q. So how did you calculate expected action	10:38:58
6	by Colby in table 3 for treatment A9?	10:39:08
7	A. Because we use benzovindiflupyr plus	10:39:15
8	prothioconazole as product A, and mancozeb as	10:39:24
9	product B, and then we do the calculation.	10:39:28
10	Q. But the calculation you need -- for the	10:39:29
11	Colby calculation, you need the individual action of	10:39:37
12	each component, correct?	10:39:43
13	A. But in this case, you can use benzo plus	10:39:47
14	prothio as product A, as just one product.	10:39:54
15	Q. Did you measure the percent control for	10:39:57
16	the combination of benzovindiflupyr and	10:40:04
17	prothioconazole?	10:40:08
18	A. In this declaration, this trial, no.	10:40:09
19	Q. Okay. Why not?	10:40:14
20	MS. HERBERT: Objection, privilege.	10:40:19
21	THE WITNESS: Because it's not requested	10:40:27
22	for our legal team.	10:40:29

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1 BY MR. FELDSTEIN: 10:40:30

2 Q. Can you turn in the '727 patent to column 10:40:31

3 20, where you had looked before, table 1. Column 10:40:34

4 20. Column 20. That's right. 10:40:46

5 A. **This one, right?** 10:40:51

6 Q. Yes. 10:40:52

7 A. **Okay.** 10:40:53

8 Q. Table 1, you had some familiarity with, 10:40:54

9 correct? 10:41:02

10 MS. HERBERT: Objection. 10:41:03

11 THE WITNESS: As I told you, only part of 10:41:06

12 it. 10:41:09

13 BY MR. FELDSTEIN: 10:41:11

14 Q. Part of table 1? What part of table 1 10:41:11

15 were you familiar with? 10:41:15

16 A. **The mix related to benzo, prothio, and 10:41:17**

17 **mancozeb.** 10:41:26

18 Q. You can see, looking now, that the 10:41:27

19 comparisons in table 1 are between -- comparing two 10:41:29

20 component fungicide versus a three component 10:41:32

21 fungicide, correct? 10:41:36

22 A. **Correct.** 10:41:37

71

1 Q. And you didn't do a comparison between 10:41:37
2 the measured activity for two components as compared 10:41:40
3 to measured activity for three components, is that 10:41:45
4 correct? 10:41:48

5 MS. HERBERT: Objection. 10:41:48

6 THE WITNESS: We did this only for the 10:41:57
7 three mix. 10:42:00

8 BY MR. FELDSTEIN: 10:42:01

9 Q. So I'm correct that you didn't do a 10:42:01
10 comparison between the measured activity for two 10:42:03
11 components as compared to the measured activity for 10:42:06
12 three components, is that correct? 10:42:08

13 MS. HERBERT: Objection. 10:42:11

14 THE WITNESS: Yeah. 10:42:14

15 BY MR. FELDSTEIN: 10:42:15

16 Q. Why not? 10:42:15

17 MS. HERBERT: Objection, privilege. 10:42:18

18 THE WITNESS: Because the legal -- the 10:42:30
19 legal part of Syngenta, they don't ask us to do the 10:42:32
20 double mix. 10:42:36

21 BY MR. FELDSTEIN: 10:42:36

22 Q. And so from your report, Exhibit 1020, 10:42:37

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1 you can't conclude anything as to whether there is 10:42:40
2 synergy of adding a third component compared to 10:42:43
3 adding -- compared to a two component composition, 10:42:47
4 correct? 10:42:51

5 MS. HERBERT: Objection, form. 10:42:52

6 THE WITNESS: In this case, we only did 10:42:57
7 the calculation for the three mixes, not for the 10:42:58
8 double mix. 10:43:03

9 BY MR. FELDSTEIN: 10:43:04

10 Q. And you didn't do a test of the actual 10:43:05
11 activity of a two component mix, correct? 10:43:07

12 A. Correct. 10:43:10

13 Q. And so there is nothing in Exhibit 1020 10:43:10
14 to compare the activity of the three component 10:43:13
15 mixtures to a two component mixture, correct? 10:43:18

16 MS. HERBERT: Objection, form and scope. 10:43:26

17 THE WITNESS: Correct. 10:43:31

18 BY MR. FELDSTEIN: 10:43:31

19 Q. And so there is no basis to conclude 10:43:32
20 whether adding mancozeb to a two component mixture 10:43:34
21 does or does not provide synergy, correct? 10:43:38

22 MS. HERBERT: Objection, form. 10:43:41

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1 THE WITNESS: I don't -- I cannot answer 10:43:42

2 it, because we didn't test it. 10:43:45

3 BY MR. FELDSTEIN: 10:43:47

4 Q. Okay. In terms of functioning as a 10:43:47

5 fungicide, did all of treatments A1 through A10 10:43:56

6 function as fungicides? 10:44:02

7 A. Ask me again, please? I didn't get it. 10:44:05

8 Q. You had treatments A1 through A10, 10:44:10

9 correct? 10:44:15

10 A. Correct. 10:44:15

11 Q. Did they all have fungicidal activity? 10:44:16

12 A. Yes. 10:44:19

13 Q. And the same for treatments B1 through 10:44:21

14 B10, did they all have fungicidal activity? 10:44:26

15 A. Yes. 10:44:29

16 Q. For the components that you were mixing 10:44:29

17 together, either -- for the components that you're 10:45:00

18 mixing together, what, if anything, did you do to 10:45:07

19 confirm that they were compatible to be mixed? Let 10:45:11

20 me back up a second. 10:45:19

21 A. Okay. 10:45:22

22 Q. Is it always the case that any two 10:45:22

74

1 fungicides can be mixed together? 10:45:28

2 **A. My knowledge is not all the time.** 10:45:32

3 **Sometimes a mix could be -- could show some** 10:45:39

4 **incompatibility or something like this.** 10:45:45

5 Q. What types of incompatibility are 10:45:45

6 possible between mixtures of fungicides? 10:45:48

7 **A. Chemical, physical incompatibility.** 10:45:51

8 Q. And what, if anything, did you do to 10:45:54

9 confirm that the components you mixed in treatments 10:45:57

10 A1 through 10 and B1 through 10 were compatible? 10:46:04

11 **A. Do you mean the efficacy of them or the** 10:46:09

12 **compatibility of them?** 10:46:19

13 Q. The compatibility. 10:46:21

14 **A. Because it's also -- because, for** 10:46:28

15 **example, the treatment A9, that is a tank mix of** 10:46:32

16 **Mitrion plus mancozeb. This is a recommendation** 10:46:40

17 **that has already happened in Brazil, so we know that** 10:46:43

18 **there is no incompatibility. No incompatibility** 10:46:45

19 **among them.** 10:46:49

20 Q. Why is A9 a recommended treatment in 10:47:00

21 Brazil? 10:47:04

22 **A. Because Syngenta recommends multisite, on** 10:47:09

75

1 **top of Mitrion. And mancozeb is one of the options** 10:47:16

2 **of multisite.** 10:47:23

3 Q. And why is that recommended, though? 10:47:25

4 A. **To resistance management mainly.** 10:47:28

5 Q. To provide enhanced resistance 10:47:31

6 management? 10:47:34

7 MS. HERBERT: Objection, form. 10:47:34

8 THE WITNESS: It's because mancozeb has a 10:47:37

9 different mode of action compared to site specific 10:47:42

10 fungicides. For example, benzovindiflupyr and 10:47:46

11 prothioconazole both are site specific. And 10:47:49

12 mancozeb, for example, both are multisite. They 10:47:52

13 have different mode of actions. So in terms of 10:47:59

14 disease resistance management, it is a good 10:48:04

15 alternative. 10:48:06

16 BY MR. FELDSTEIN: 10:48:07

17 Q. Is there something -- mancozeb is not the 10:48:07

18 only -- 10:48:09

19 A. **Multisite.** 10:48:12

20 Q. -- multisite fungicide, correct? 10:48:12

21 A. **Yeah, it's not the only one.** 10:48:14

22 Q. Why is mancozeb recommended for 10:48:16

76

1 combination with benzovindiflupyr and 10:48:19

2 prothioconazole? Why mancozeb, specifically? 10:48:22

3 MS. HERBERT: Scope -- sorry. Scope. 10:48:22

4 THE WITNESS: Because farmers, they 10:48:36

5 like -- they want to use multisite and mancozeb is 10:48:39

6 one of that. 10:48:43

7 BY MR. FELDSTEIN: 10:48:45

8 Q. Is there any reason why manco is a 10:48:45

9 preferred multisite in combination with 10:48:48

10 benzovindiflupyr and prothioconazole? 10:48:50

11 A. It's not the preferable one. It's one of 10:48:53

12 the options. (Inaudible) also is an option. 10:48:58

13 Q. I'm sorry, what is it? 10:48:58

14 A. (Inaudible). 10:48:59

15 (Discussion off the record.) 10:48:59

16 THE WITNESS: I can repeat. I said that 10:49:11

17 mancozeb is not the favorable multisite recommended 10:49:15

18 on top of benzovindiflupyr and prothioconazole. 10:49:21

19 It's one of them. (Inaudible) is other multisite 10:49:25

20 that we recommended, and also the farmer used. 10:49:31

21 Q. Does the combination of benzovindiflupyr, 10:49:35

22 prothioconazole, and mancozeb work well for disease 10:49:41

1 management, resistance management? 10:49:47

2 **A. We believe so.** 10:49:51

3 Q. What have you done to determine that the 10:49:58

4 combination of benzovindiflupyr, prothioconazole, 10:50:01

5 and mancozeb works well for resistance management? 10:50:05

6 **A. Based it on the different mode of** 10:50:10

7 **actions. We are combining site specific plus** 10:50:16

8 **multisite, the same application.** 10:50:26

9 Q. And do you have any data or experiments 10:50:28

10 reflecting the resistance management provided by the 10:50:30

11 combination of benzovindiflupyr, prothioconazole, 10:50:35

12 and mancozeb? 10:50:37

13 **A. I cannot answer it. I don't know.** 10:50:39

14 Q. There may be? 10:50:44

15 **A. Yeah, maybe.** 10:50:49

16 Q. Would Syngenta be recommending three part 10:50:51

17 combinations without having data to test them for 10:50:55

18 efficacy? 10:51:00

19 MS. HERBERT: Objection, scope. 10:51:01

20 THE WITNESS: No, Syngenta did not 10:51:08

21 recommend mancozeb, if mancozeb is not -- not the 10:51:10

22 adding something in terms of resistance management 10:51:17

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1 or something like this. 10:51:19

2 BY MR. FELDSTEIN: 10:51:21

3 Q. So it's safe to say that if Syngenta's -- 10:51:21

4 it's safe to say that because Syngenta is 10:51:24

5 recommending combinations of benzovindiflupyr, 10:51:27

6 prothioconazole, and mancozeb, that it does have 10:51:32

7 some basis to show added value in terms of 10:51:37

8 resistance management or some other properties, 10:51:43

9 correct? 10:51:46

10 MS. HERBERT: Objection, form and scope. 10:51:46

11 THE WITNESS: Yes, correct. 10:51:50

12 BY MR. FELDSTEIN: 10:51:53

13 Q. But you don't know what the additional 10:51:53

14 benefits known to Syngenta are in terms of 10:51:56

15 resistance management or some other properties for 10:51:59

16 the combination of benzovindiflupyr, 10:52:01

17 prothioconazole, and mancozeb, is that correct? 10:52:05

18 MS. HERBERT: Objection, scope. 10:52:08

19 THE WITNESS: Yes. 10:52:10

20 BY MR. FELDSTEIN: 10:52:12

21 Q. Still in table 2 of your report, 10:52:14

22 treatment A1 is benzovindiflupyr at a rate of 30, 10:52:25

79

1 correct? 10:52:29

2 A. Correct. 10:52:29

3 Q. And if you can look kind of 10:52:30

4 simultaneously at your table 5. You also, in B1, 10:52:34

5 apply benzovindiflupyr at a rate of 30, correct? 10:52:46

6 A. Correct. 10:52:51

7 Q. In table 2, you have 36 percent control, 10:52:51

8 correct? 10:52:56

9 A. Uh-huh. 10:52:56

10 Q. And table 5, you have 55 percent control, 10:52:57

11 correct? 10:53:00

12 A. Correct. 10:53:01

13 Q. Do you have an explanation for the large 10:53:01

14 variability between the percent control for the two 10:53:05

15 treatments of the same active ingredient at the same 10:53:09

16 application rate? 10:53:14

17 A. Yeah. As I told you, considering 10:53:15

18 different seasons, different weather conditions, 10:53:22

19 different locations, we can expect some variability 10:53:24

20 in terms of percentage of control. 10:53:28

21 So here we are talking about almost 20 10:47:19

22 percent of control. This is matched what I told you 10:53:35

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1 **before, that's the kind of variation considering** 10:53:39
2 **different location and different weather conditions,** 10:53:43
3 **and disease pressure as well.** 10:53:46

4 Q. For the data that underlies Exhibit 1020, 10:53:49
5 did Syngenta have enough information to do 10:53:55
6 statistical analyses between the different 10:53:57
7 treatments? 10:54:00

8 A. **Can you ask me again?** 10:54:00

9 Q. I'll back up a little bit. Table 2, you 10:54:07
10 report a single percent control value, correct? 10:54:15

11 A. **Uh-huh.** 10:54:18

12 Q. Did you do any statistics to -- on those 10:54:18
13 percent controls, or did you only obtain an average 10:54:23
14 value? 10:54:27

15 A. **No, we normally did statistical analysis.** 10:54:29

16 Q. And what did the statistical analysis 10:54:34
17 show in comparing the treatments A1 through A10? 10:54:37

18 MS. HERBERT: Objection, form. 10:54:41

19 THE WITNESS: I don't remember exactly. 10:54:44
20 I cannot answer it. 10:54:46

21 BY MR. FELDSTEIN: 10:54:47

22 Q. And did you also do statistical analyses 10:54:47

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1 for the data in table 5 for treatments B1 through 10:54:51

2 B10? 10:54:58

3 A. Yeah, we did. 10:54:58

4 Q. And what did those statistical analyses 10:54:59

5 show for comparing treatments B1 through B10? 10:55:02

6 MS. HERBERT: Objection, form. 10:55:05

7 THE WITNESS: I cannot answer it. I 10:55:09

8 don't remember that. The statistical difference. 10:55:10

9 BY MR. FELDSTEIN: 10:55:19

10 Q. Turn to page 6 of your declaration. You 10:55:20

11 have field test 2. 10:55:38

12 A. Okay. 10:55:40

13 Q. Other than the differences in the timing 10:55:41

14 and the varieties, was field test 2 otherwise 10:55:46

15 identical to field test 1 in terms of what was done? 10:55:51

16 A. Yeah, the only difference between field 10:55:55

17 test 1 and field test 2 are the varieties basically 10:56:02

18 and locations. 10:56:06

19 Q. And the calculations that you did for 10:56:08

20 field test 2, they are the same calculations as you 10:56:11

21 did for field test 1? 10:56:14

22 A. Yeah. 10:56:16

1 Q. And the field handbook that contains the 10:56:16
2 information -- let me say that differently. There 10:56:19
3 is a field handbook that contains the information 10:56:27
4 for trial 1, correct? 10:56:30

5 A. Yes, we have it for all of the trials. 10:56:31

6 Q. Is it a separate field handbook that 10:56:33
7 contains the information for trial 2? 10:56:37

8 A. Yes, because they are different trials. 10:56:39

9 Q. Actually, I think I need to go back a 10:56:43
10 little bit. I apologize. Can you go back to table 10:57:11
11 3 in your Exhibit 1020, page 5? 10:57:16

12 A. Table 3? 10:57:19

13 Q. Yes, page 5. 10:57:23

14 A. Okay. 10:57:26

15 Q. For A9, that's the one that included 10:57:26
16 benzovindiflupyr at a rate of 33.8 grams per 10:57:31
17 hectare, correct? 10:57:36

18 A. Correct. 10:57:37

19 Q. Where is the isolated control for 10:57:39
20 benzovindiflupyr from? 10:57:44

21 A. It's from benzovindiflupyr at 30, A1. 10:57:49

22 Q. Why did you use a different -- why did 10:57:56

83

1 you use the isolated control at a different rate for 10:57:59

2 A9 than what was actually applied? 10:58:02

3 **A. Because here we are using Mitrion, the 10:58:06**

4 **double mix that I told you. And we are using the 10:58:12**

5 **recommended rate that delivers 33.8 plus 67.5. 10:58:14**

6 Q. And why didn't you do a solo application 10:58:22

7 of benzovindiflupyr at 33.8 grams per hectare? 10:58:27

8 MS. HERBERT: Objection, privilege. 10:58:31

9 THE WITNESS: Because we followed the 10:58:35

10 range of rates that the legal part show us to test 10:58:38

11 it. 10:58:44

12 BY MR. FELDSTEIN: 10:58:44

13 Q. So you didn't do a solo application at 10:58:45

14 33.8 based on what you were directed from your 10:58:47

15 counsel, is that correct? 10:58:51

16 **A. Yeah, we used 30. 10:58:55**

17 Q. And where was, if anywhere, is that 10:59:06

18 explained where you used the rate different than 10:59:10

19 what was actually done, is that explained in your 10:59:13

20 report somewhere? 10:59:17

21 **A. Could you ask me again, please? 10:59:19**

22 Q. Do you explain anywhere in your report 10:59:21

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1 that you used, for example, for treatment A9, 10:59:24
2 benzovindiflupyr -- excuse me, I'm going to start 10:59:30
3 again. 10:59:35

4 A. Uh-huh. 10:59:35

5 Q. Do you explain anywhere in your report, 10:59:36
6 Exhibit 1020, that for treatment A9, you used the 10:59:38
7 measured control for a different application rate of 10:59:42
8 benzovindiflupyr than was actually done in treatment 10:59:50
9 A9? 10:59:53

10 MS. HERBERT: Objection, form. 10:59:54

11 THE WITNESS: I don't understand your 11:00:31
12 question. We used 30 solo of benzovindiflupyr and 11:00:35
13 70 of prothioconazole, isolated to be close to 33.8 11:00:49
14 plus 67.5. 11:00:57

15 BY MR. FELDSTEIN: 11:01:00

16 Q. And is that explained anywhere in Exhibit 11:01:00
17 1020, that you use control values for something 11:01:04
18 different than what you actually applied? 11:01:09

19 MS. HERBERT: Objection, form. 11:01:13

20 THE WITNESS: I cannot confirm it. 11:01:18

21 BY MR. FELDSTEIN: 11:01:19

22 Q. Okay. In treatment A4 in table 3. 11:01:19

85

A. Okay. 11:01:23

2 Q. For prothioconazole at a rate of 70 grams 11:01:24

3 per hectare, you have an isolated control of 64, 11:01:28

4 correct? 11:01:36

A. Correct.

6 Q. Where is that from? 11:01:37

7 A. It's from the isolated AI. 11:01:41

8 Q. Where is there a 64 reported as isolated 11:01:44

9 AI for prothioconazole? 11:01:48

10 A. You mean here in table 3? 11:01:51

11 Q. In table 3, you report an isolated -- in 11:01:57

12 table 3, under treatment A4 for prothioconazole at 11:02:04

13 70 grams per hectare, you say the isolated AI 11:02:07

14 percent control is 64, correct? 11:02:11

A. Correct. 11:02:12

16 Q. Where is that value of 64 from? 11:02:13

17 A. Actually, 65 -- 64 here is the same. 65 11:02:15

18 and 64, in this case, is the same. Maybe it's a 11:02:24

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19      typo here.                                     11:02:28
```

20 Q. Which is a typo, the 64 or the 65? 11:02:29

[illegible]

22 Q. And you're pointing back to the 65 in 11:02:36

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1 table 2, treatment A2, correct? 11:02:40

2 A. Yeah. 11:02:42

3 Q. Are there any other typos in the data 11:02:46

4 that you're aware of? 11:02:49

5 A. Sorry? 11:02:50

6 Q. Are there any other typos in the data 11:02:51

7 that you're aware of? 11:02:54

8 A. No. 11:02:55

9 Q. Had you checked the data compared to the 11:02:55

10 source? 11:02:57

11 A. Yeah, I check it. 11:02:58

12 Q. In table A3, you have a column of 11:02:59

13 expected actions and the values are from 89 to 94, 11:03:09

14 correct? 11:03:14

15 A. 89 and 94. 11:03:14

16 Q. 89 through 94, correct? 11:03:21

17 A. You mean both forms here, right? 11:03:25

18 Q. In terms of -- in the column, you have a 11:03:26

19 column, expected action by Colby? 11:03:29

20 A. Yeah. 11:03:30

21 Q. And the range of values you have reported 11:03:31

22 there are from 89 through 94, correct? 11:03:34

87

1 A. 89 is the results expected using Colby 11:03:38

2 **for both.** 11:03:43

3 Q. Looking at all of the treatments on table 11:03:43

4 3, the range of expected action by Colby is from 89 11:03:46

5 through 94, correct? 11:03:50

6 A. Yeah, correct. 11:03:51

7 Q. And is that a good result in terms of 11:03:52

8 fungicide percent control? 11:03:56

9 MS. HERBERT: Objection, form and scope. 11:03:58

10 THE WITNESS: Yeah, it is. 11:04:09

11 BY MR. FELDSTEIN: 11:04:10

12 Q. Is that typically achieved percent rust 11:04:11

13 control? 11:04:18

14 MS. HERBERT: Objection, form and scope. 11:04:18

15 THE WITNESS: No, it's really hard to 11:04:23

```
16 find a combination that delivers more than 80      11:04:25
```

17 percent of control. 11:04:29

18 BY MR. FELDSTEIN: 11:04:30

19 Q. Can you turn to table 5 on page 8? Is 11:04:32

20 treatment B7, again, a combination of some 11:05:16

21 commercial premix adding on top of that mancozeb? 11:05:20

22 **A.** Yeah, it is. 11:05:26

88

1 Q. And is the benzovindiflupyr and 11:05:28

2 azoxystrobin combination, Elatus? 11:05:32

3 A. **It's Elatus.** 11:05:38

4 Q. And Elatus is a Syngenta product? 11:05:40

5 A. **Yes, it is.** 11:05:44

6 Q. And that's something you're familiar 11:05:45

7 with? 11:05:47

8 A. **Yes.** 11:05:47

9 Q. Do you know the recommended number of 11:05:49

10 treatments of Elatus for soy? 11:05:51

11 MS. HERBERT: Objection, scope. 11:05:58

12 THE WITNESS: Meaning the number of 11:06:00

13 applications? 11:06:01

14 BY MR. FELDSTEIN: 11:06:02

15 Q. Correct. 11:06:02

16 A. **Commercially speaking?** 11:06:07

17 Q. Yeah. 11:06:09

18 A. **I don't remember exactly. We recommended** 11:06:12

19 **two sprays in our label.** 11:06:18

20 Q. Two? 11:06:21

21 A. **Two. Up to two.** 11:06:22

22 Q. Up to two applications? 11:06:23

89

A. Yeah. 11:06:24

2 Q. Yeah, okay. You did in the trials -- the 11:06:25

3 second field trial, you were doing three 11:06:37

4 applications, is that correct? 11:06:39

A. Yeah. 11:06:39

6 Q. And that's inconsistent with the label 11:06:40

7 for Elatus, correct? 11:06:43

8 MS. HERBERT: Objection, scope. 11:06:46

9 THE WITNESS: Yes, it's out of the label. 11:06:49

10 BY MR. FELDSTEIN: 11:07:00

11 Q. And so you were saying that you were 11:07:00

12 trying to re-create farmer conditions. How were you 11:07:03

```
13 re-creating farmer conditions if you were doing 11:07:06
```

```
14 something different than what was actually 11:07:08
```

15 recommended by Syngenta? 11:07:11

16 **A.** Because normally, the farmers don't 11:07:12

17 follow exactly our recommendation. They do more 11:07:14

18 spray than we recommend sometimes. 11:07:19

19 Q. So your understanding is that farmers use 11:07:20

20 three applications of Elatus on soybean? 11:07:22

A. Could be.

22 Q. Do you know if they do? 11:07:27

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A. I know. 11:07:29

2 Q. I'm sorry? 11:07:29

A. I know. 11:07:30

4 Q. You know that they do? 11:07:31

[illegible]

6 Q. Are farmers allowed to use a product 11:07:41

7 inconsistently with the recommended number of 11:07:44

8 applications in Brazil? 11:07:47

9 MS. HERBERT: Objection, scope. 11:07:48

10 THE WITNESS: Could you ask me again, 11:07:51

11 please? 11:07:52

12 BY MR. FELDSTEIN: 11:07:52

13 Q. Do you know whether farmers in Brazil are 11:07:52

14 allowed to use fungicides in a manner inconsistent 11:07:55

15 with the recommended applications? 11:08:02

16 MS. HERBERT: Objection, scope. 11:08:06

17 THE WITNESS: I cannot answer it. 11:08:15

18 BY MR. FELDSTEIN: 11:08:18

19 Q. On page 8 in table 5 of your declaration, 11:08:19

20 you have treatment B8. 11:08:25

21 **A.** **Okay.** 11:08:30

22 Q. It's a four component combination, 11:08:30

91

1 correct? 11:08:32

2 A. Correct. 11:08:33

3 Q. Why did you do a four component 11:08:36

4 combination for treatment B8? 11:08:38

5 MS. HERBERT: Objection, privilege. 11:08:41

6 THE WITNESS: Because here we are using 11:08:45

7 Alade. That is a triple mix. 11:08:48

8 BY MR. FELDSTEIN: 11:08:51

9 Q. What is the name of the product? 11:08:51

10 A. Alade. 11:08:53

11 Q. Can you spell that? 11:08:53

12 A. A-l-a-d-e. Yeah. 11:09:01

13 Q. And is that a Syngenta product? 11:09:02

14 A. Yes. 11:09:06

15 Q. And is Syngenta recommending the 11:09:07

16 combination of Alade and mancozeb? 11:09:08

17 MS. HERBERT: Objection, scope. 11:09:12

18 THE WITNESS: Syngenta recommends use of 11:09:14

19 multisite, and mancozeb is one of them. 11:09:18

20 BY MR. FELDSTEIN: 11:09:21

21 Q. And you would expect that Syngenta has 11:09:24

22 data to support the beneficial use of mancozeb with 11:09:41

1 Alade, is that correct? 11:09:46

2 MS. HERBERT: Objection, scope. 11:09:47

3 THE WITNESS: The same answer that I did 11:09:51

4 for the Mitrion. Same rationality, same rationale 11:09:55

5 behind. 11:10:00

6 BY MR. FELDSTEIN: 11:10:01

7 Q. Which is if Syngenta is recommending it, 11:10:01

8 Syngenta has a basis for recommending it, correct? 11:10:04

9 MS. HERBERT: Objection, scope. 11:10:07

10 THE WITNESS: Syngenta recommends 11:10:08

11 multisite for resistance management, as I told you. 11:10:11

12 And mancozeb is one of them. 11:10:13

13 BY MR. FELDSTEIN: 11:10:15

14 Q. And would have experimental evidence to 11:10:15

15 support that recommendation prior to making the 11:10:18

16 recommendation, correct? 11:10:20

17 MS. HERBERT: Objection, scope. 11:10:20

18 THE WITNESS: I don't remember exactly if 11:10:24

19 Syngenta has some kind of experiment of that. 11:10:26

20 BY MR. FELDSTEIN: 11:10:29

21 Q. Would you expect that Syngenta had 11:10:30

22 evidence to support the use of mancozeb with Alade? 11:10:31

1 MS. HERBERT: Objection, scope. 11:10:38

2 THE WITNESS: Syngenta is following what 11:10:40

3 the farmers most used. So the farmer used multisite 11:10:42

4 on top of site specific. 11:10:48

5 BY MR. FELDSTEIN: 11:10:51

6 Q. Sure. But my question is, would you 11:10:51

7 expect that Syngenta has evidence to support the use 11:10:53

8 of mancozeb with Alade? 11:10:56

9 MS. HERBERT: Objection, scope. 11:10:59

10 THE WITNESS: I cannot answer. 11:11:01

11 BY MR. FELDSTEIN: 11:11:03

12 Q. You don't know? 11:11:03

13 A. **Yeah, I don't know.** 11:11:04

14 MR. FELDSTEIN: Okay. Let's take a 11:11:10

15 break. 10 minutes? 11:11:33

16 THE VIDEOGRAPHER: The time is 11:11 a.m. 11:11:35

17 We are going off the record. 11:11:38

18 (Recess.) 11:11:44

19 THE VIDEOGRAPHER: The time is 11:19 a.m. 11:19:26

20 We are back on the record. 11:19:30

21 MR. FELDSTEIN: Doctor, thank you for 11:19:32

22 your time. We don't have any further questions. 11:19:35

1 THE WITNESS: Thank you. 11:19:37

2 MR. FELDSTEIN: Are we off the record? 11:19:38

3 THE VIDEOGRAPHER: All right, stand by. 11:19:40

4 The time is 11:19 a.m., September 20th, 2023. We 11:19:41

5 are going off the record, concluding today's video 11:19:47

6 recorded session. 11:19:48

7 (Whereupon, at 11:19 a.m., the deposition
8 concluded.)

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1 CERTIFICATE OF REPORTER

2 I, Susan L. Ciminelli, Registered Professional
3 Reporter and Notary Public in and for Washington,
4 D.C., the officer before whom the proceedings were
5 taken, do hereby certify that the foregoing
6 transcript is a true and accurate record of these
7 proceedings; that said proceedings were taken in
8 Stenotype notes by me on the 20th day of September,
9 2023, commencing at 9:05 a.m., ending at 11:19 a.m.

10 I further certify that present on behalf of
11 Party UPL LTD., were Mark J. Feldstein, Ph.D.,
12 Maximilienne Giannelli, Ph.D., and David Klecyngier
13 of Finnegan, Henderson, Farabow, Garrett & Dunner,
14 LLP and on behalf of Party Syngenta Crop Protection
15 AG was Toni-Junell of BakerHostetler.

16 I further certify that I am not related to, nor
17 associated with any of the parties or their
18 attorneys, nor do I have any disqualifying interest,
19 personal or financial in the actions within.

20 Dated this 27th day of September, 2023 at
21 Washington, D.C.

22


SUSAN L. CIMINELLI

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