Exhibit 27

Page 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES OF THE :

LELAND STANFORD JUNIOR :

UNIVERSITY

Plaintiff :

: Case No.

ROCHE MOLECULAR SYSTEMS, et al: C 05 04158 MHP

Defendants

Counterclaimants :

ROCHE MOLECULAR SYSTEMS, et al:

THE BOARD OF TRUSTEES OF THE :

LELAND STANFORD JUNIOR

UNIVERSITY; THOMAS MERIGAN; :

AND MARK HOLODNIY

Counterclaim Defendants :

Deposition of JOHN G. BARTLETT, M.D.

Baltimore, Maryland

Wednesday, September 5, 2007

3:19 p.m.

Job No.: 399424

Pages: 1 - 59

Merrill Legal Solutions (800) 869-9132

·			
	Page 6	And the contract of the contra	Page 8
1	A Okay.	1	says I'm going to just read a sentence here. It's
2	Q Also, if any of my questions are not clear,	2	the last sentence, Paragraph 11. It says, I have
3	please let me know and I'll try and rephrase, or if	3	received a number of honors and awards in connection
4	the question is lost, I have access here and I will	4	with my medical career, as well as my research and
5	restate it pretty quickly as well if that's needed.	5	treatment of HIV patients, including the 1992 Medical
6	A Fine.	6	Writers Association Award for Best Medical Book (Guide
7	Q Also if you need to take a break at any	7	to Living with HIV Infection, Johns Hopkins University
8	time, just let me know and we'll get that done as	8	Press), the 1993 HERO Award for AIDS Patient Care for
9	well. I may need breaks myself on a fairly regular	9	1983 to 1993, and the 2005 Alexander Fleming Award for
10	basis.	10	Lifetime Achievement by the Infectious Diseases
11	MR. CANNON: Just let us know if you need a	11	Society of America.
12	break.	12	Did I read that correctly?
13	THE WITNESS: Yes, I will.	13	A Yes.
14	Q Any questions?	14	Q Do you have any other awards?
15	A No.	15	A Yeah. I have the Max Finland Award for
16	Q Where are you currently employed?	16	Lifetime Achievement from the Infectious the
17	A Johns Hopkins University.	17	National Foundation for Infectious Disease. I think
18	Q And what is your position?	18	that's it.
19	A I'm Professor of Medicine in the Department	19	Q Great. So this is not a comprehensive list
20	of Medicine in the Division of Infectious Disease.	20	of the awards you have. It's just a sampling
21	Q How long have you been at Johns Hopkins?	21	A No
22	A 1980 to the present.	22	Q right?
23	Q Where were you before that?	23	A but it's hard to know when to draw the
24	A Tufts University School of Medicine.	24	line.
25	MR. DAMSTEDT: I'd like to mark as the next	25	Q Great. Have you had your deposition taken
	Page 7		Page 9
1	in order the Declaration that was filed. It's titled	1	before?
2	the Declaration of John G. Bartlett, M.D. in support	2	A Yes, I have.
3	of Roche's Responsive Claim Construction Brief.	3	Q How many times?
4	(Exhibit No. 700 was marked for identification	4	A In the last 15 years, perhaps twice.
5	and was attached to the transcript.)	5	Q Okay. What types of cases were those?
6	MR. CANNON: I note for the record that this	6	A Clostridium difficile-associated colitis,
7	Exhibit does not contain the attachments that were	7	and I think both cases involved that complication.
8	filed along with it.	8	Q Were you testifying in those cases as an
9	A (Reviewing.)	9	expert or a fact witness?
10	BY MR. DAMSTEDT:	10	A An expert.
11	Q Have you had a chance to review the	11	Q Have you ever been involved in a patent
12	document?	12	case?
13	A Yes, I have.	13	A No.
14	Q Is it the Declaration that was filed on your	14	Q Is there any reason today that you cannot
15	behalf?	15	give true and accurate, complete and truthful
16	A Yes, it is.	16	testimony?
17	Q If you could turn to Paragraphs 7 to 11, do	17	A No.
18	those paragraphs recite your qualifications?	18	Q Are you taking any medications that would
19	A (Reviewing.)	19	impair your ability to give complete and truthful
20	Yes, I think they do. If I was going to	20	testimony?
21	make any additions to what is here, it would be that I	21	A I'm taking medications; none that would
22	founded the AIDS service at Johns Hopkins in 1983, and	22	impair me. I'm on things like Lipitor.
23	am the Director of the AIDS Service at Johns Hopkins,	23	Q I understand you've been engaged by Roche to
24	and I am not sure that that information is here.	24	serve as an expert; is that correct?
25	Q Great. Appreciate it. In Paragraph 11 it	25	A Yes.

3 (Pages 6 to 9)

Γ			
	Page 22		Page 24
1	Q Do you have an opinion as to what level of	1	opinion as to the level of ordinary skill of a person
2	skill is ordinary in that field?	2	in the field of art of patient care in 1992; is that
3	A Well, it's not really officially defined by	3	correct?
5	anyone, and it's not a field in which I would claim	4	MR. CANNON: Objection. Lacks foundation.
6	expertise, and perhaps that means that I'm not the right person to make the definition. I can I can	5	Misstates testimony.
7	try if you want me to.	7	A Well, you changed the phraseology a little bit.
8	Q Sorry, I have	8	Q Okay.
9	A My I mean you have to be able to do it.	9.	A You said I thought the first question was
10	You have to have experience with it.	10	to define it, and the second was do I have an opinion
11	•	11	about it. And I can have an opinion, but what I gave
12	state, with respect to the development and use of PCR	12	you the first time was, was an officially-reviewed
13	techniques, I agree with Roche's statement that a	13	consensus statement, and we don't have that for 1992.
14	person of ordinary skill in the art would have a	14	Q Okay. Well, what is your opinion?
15	medical or graduate degree in biochemistry or a	15	A For 1992 it would probably be a physician
16	related field and at least two years of relevant	16	who had experience in primary care infectious disease
17	laboratory bench experience conducting PCR assays.	17	or infectious disease as a background and experience
18	Did I read that correctly?	18	with HIV-infected patients, but that's not official.
19	A I was just going to say the same thing,	19	Q And is that description or opinion as to the
20	yeah.	20	level of skill of a person of ordinary skill in the
21	Q What is the basis for that opinion?	21	art stated anywhere in your Declaration?
22 23	A Well, it it makes sense. It's a highly	22	A No.
24	technical field, and it it would seem that if you're going to try to define it, that would be	23	Q Continuing on with your Declaration,
25	reasonable.	25	Paragraph 39. A Yes.
	Page 23		
1_			Page 25
1	Q Have you ever conducted laboratory bench	1	Q Okay. The first sentence reads,
2	experiments using PCR?	2	antiretroviral agents are drugs that are effective in
3	A No.	3	reducing or stopping replication of retroviruses.
5	Q Have you ever supervised anyoneA No.	4 5	Did I read that correctly? A Yes.
6	Q conduct sorry. Let me finish my	6	Q Is that your understanding as to what the
7	question.	7	words antiretroviral agent meant to a person of
8	A I'm sorry.	8	ordinary skill in 1992?
9	Q Have you ever supervised anyone conducting	9	MR. CANNON: Objection. Lacks foundation.
10	laboratory bench experiments using PCR?	10	A Yes.
11	A No.	11	Q And you used that term in 1992, correct?
12	Q Going back just a second to the patient	12	A I don't know.
13	care	13	Q Was that a term with which you were familiar
14	A Yes.	14	in 1992?
15	Q field of art. Is the definition you gave	15	A Yes.
16	me the definition that would apply today, or the	16	Q Persons of ordinary skill in the art still
17	definition that would apply in 1992?	17	use antiretroviral agent, that term in the same way
18	A Today it's official.	18	today; is that correct?
19	Q Do you have a definition of the level of	19	MR. CANNON: Objection. Lacks foundation.
20	skill in the art for a person of ordinary skill in	20	A I think the concept is the same. The field
21	1992?	21	is so much different.
22	A There were definitions at that time, but	22	Q So is it your opinion that the words
23	none that were agreed on. That would be hard for me to do it.	23 24	antiretroviral agent mean the same thing today that they did in 1992, but that there are new
124	Q So sitting here today, you do not have an	25	antiretroviral agents and new ways of using
25			

7 (Pages 22 to 25)

Γ	P 0.6		
	Page 26	Bereit	Page 28
1	antiretroviral agents today?	1	given to patients. A substance could be acid.
2	MR. CANNON: Objection. Misstates	2	Q So by drug or medication, you're referring
3	testimony. Object to the form of the question.	3	to something that could be given to a person?
4	A I think the fundamentals are the same. The	4	A I think so, yes.
5	nuances are probably different.	5	Q In Paragraph 39 you also use the phrase
6	Q In your view, do in your opinion, excuse	6	reducing or stopping replication of retroviruses?
7	me, do the patents and prosecution history use the	7	A Yes.
8	term antiretroviral agent consistent with the meaning	8	Q Is this statement limited to any specific
10	of antiretroviral agent that we have just been talking about?	9	step in the replication cycle or does it include all
11	MR. CANNON: Object to the form of the	10	the steps, such as fusion, reverse transcription, integration, et cetera?
12	question.	12	A It can apply to any step in the process.
13	A I'm not sure that I can answer questions	13	Q Persons of ordinary skill in the art in 1992
14	about the patent part of this.	14	knew of the different steps in the replication cycle
15	Q I'm sorry, I missed the last part.	15	of HIV; is that correct?
16	A I'm	16	A I think they knew most of them, yes.
17	Q You are not sure	17	Q Okay. Which steps were not known by persons
18	A I can answer questions about the patent part	18	of ordinary skill in the art in 1992?
19	of this. I don't know enough about patents.	19	A I don't know.
20	Q Have you read through the patents?	20	Q Persons of ordinary skill in the art in 1992
21	A Yes, I did.	21	also understood that stopping or inhibiting any of the
22	Q Did you read through portions of the	22	steps in the replication cycle could reduce or stop
23	prosecution history?	23	replication of HIV; is that correct?
24	A Yes, I did.	24	A Yes.
25	Q Was there anything in the patents or the	25	MR. DAMSTEDT: Handing to the Court Reporter
	Page 27	4	Page 29
1	prosecution history as you were reading through it	1	an article titled Antiretroviral Therapy of Human
2	that used the term antiretroviral agent in a way that	2	Immunodeficiency Virus Infection: Current Strategies
3	was inconsistent with the definition you gave just a	3	and Challenges for the Future.
4	moment ago?	4	(Exhibit No. 703 was marked for identification
5	A I don't remember.	5	and was attached to the transcript.)
6	Q Turning back to that sentence in Paragraph	6	BY MR. DAMSTEDT:
7	39	7	Q Please take a moment to look through the
8	A Yes.	8	document, and I'm going to point you to Table 1
9	Q the first sentence, you say	9	eventually.
10	antiretroviral agents are drugs. What do you mean by	10	MR. CANNON: Take your time and read what
11	the word drugs there?	11	you need to read, but then he'll ask you follow-up
12	A Well, I guess drugs are synonymous with	12	questions.
13	medications.	13	A (Reviewing).
14	Q Are you restricting antiretroviral agents to	14	Q Okay. Have you had a chance to review the
15	only FDA-approved medications in that sentence?	15	document?
16	A No. No.	16	A Well, I've looked at Table 1.
17 18	Q Would it be fair to say that antiretroviral	17	Q Are you familiar with any of the authors of
19	agents are substances that are effective in reducing or stopping replication of retroviruses?	18	this article?
20	MR. CANNON: Object to the form of the	19 20	A Sam Broder well, I'm sorry. The answer is that I know the names of three.
21	question.	21	
22	A I think there needs to be a distinction	22	Q Okay. Who are those? A I don't know them.
23	between the word substance and drugs.	23	Q Who are those three?
24	Q Okay. What is that distinction?	24	A Robert Yarchoan, Sam Broder, and Mitsuya.
25	A Well, drugs are medications that can be	25	Q Now, turning to Table 1.
999999	The state of the s		Z on, talling to racte 1.

8 (Pages 26 to 29)

	•		•
	Page 34		Page 36
1	A I'll say what I said before. Some would,	1	of the drug?
2	and many would not. Clinical research is different.	2	A There is a process for developing drugs that
3	Q Was it understood by people of ordinary	3	begins with the chemistry and then some I don't
4	skill in the art in 1992 that inhibiting protease	4	know if you want me to go through the whole process.
5	could reduce or stop replication of HIV?	5	It begins with the discovery of a chemical that
6	MR. CANNON: Object to the form of the	6	usually, or often works in a test tube, and then is
7	question.	7	tested for safety in animals, and then is tested for
8	A Person of ordinary skill?	8	pharmacology in people, and then is given to patients
9	Q Yes.	9	with a disease process, and then is put through a
10		10	large therapeutic trial starting with Phase 1, Phase
111	Q And why not?	11	2, and Phase 3, and then presented to an Advisory
12	A Because protease is in a long list here.	12	Board to the FDA, and then approved or disapproved by
13	I've already said that the person that of ordinary	13	the FDA, and then becomes part of the pharmacopeia.
14	skill in taking care of AIDS patients does not know	14	Q Great. So those are all parts of the
15	this list need to know this list.	15	development process?
16	Q And that's because they're involved solely	16	A Yes.
17	in patient care; is that your opinion?	17	Q So in Paragraph 41 of your Declaration you
18	MR. CANNON: Object to the form of the	18	say, protease inhibitors and HAART therapy were
19	question.	19	neither known or available for therapy until well
20	A I didn't say they were involved solely in	20	after May 1992.
21	patient care.	21	Did I read that correctly?
22	Q Then why is it that a person of ordinary	22	A Yes.
23	skill would not need to know the list of these steps	23	Q What is the basis for your opinion that
24	of the HIV replication cycle?	24	protease inhibitors were neither known or available
25	A Because the person taking care of patients	25	for therapy until well after May 1992?
	Page 35		Page 37
1	does not need to know the basic science of every	1	A Well, the phrase known I guess you'd have
2	disease they take care of.	2	to say that protease, or the potential to inhibit
3	Q Let's go to Paragraph 5 or excuse me,	3	protease was at least on a long list of drugs before
4	Paragraph 6 of your Declaration.	4	that, but my statement of neither known is, really
5	A (Complying), yes.	5	means what, what did we know about or hear in 1992 and
6	Q All right. Paragraph 6, the third sentence,	6	when did those drugs become available.
7	I believe it says	7	My view is that protease inhibitors became
8	A Wait. I'm sorry, Paragraph 5 or 6?	8	known to my field about 1994 or 1995, and they became
9	Q 6. Excuse me.	9	available in December of 1995 and early 1996.
10	MR. CANNON: 6.	10	Q Are you aware of any publicly available
11	A (Complying), okay.	11	documents that describe protease inhibitors before May
12	Q The third sentence says, in May 1992 there	12	of 1992?
13	were only a limited number of antiretroviral agents	13	A Oh, there were publications that go back to
14	known to AIDS doctors and researchers, and an even	14	the 1980s.
15	smaller number that were both known and available.	15	Q Okay. And what are those publications?
16	Did I read that correctly?	16	A I don't have them, but I can get them. You
17	A Yes.	17	can get them in PubMed. Just type in protease
18	Q What is the difference between an	18	inhibitor and it will give you a thousand citations
19	antiretroviral agent being known and it being	19	and go back to the first. I think it's 1980.
20	available?	20	Q Okay. And those would apply to HIV or
21	A Known means that it has been in some part of	21	those
22	the development of a drug, and available means that	22	A Protease inhibitors in other no, it's
23	it's in drugstores. Q Could you describe more precisely what you	23 24	before HIV. Q So were there, to your knowledge,
24			

10 (Pages 34 to 37)

25 publications relating to protease inhibitors of HIV

25 mean by it having been in some part of the development

1 protease prior to 1992? 2 A Yes. 3 Q What is HAART therapy? 4 A The letters mean highly active 5 antiretroviral therapy. 5 antiretroviral therapy. 6 Q Other than defining or spelling out what the acronym means, can you describe HAART therapy more generally? 9 A It refers to therapy using drugs that are effective against HIV infection. 10 Q Okay. Are dietyoxy nucleicides (phonetic) 12 used in HAART therapy more 13 A Yes. 13 A Yes. 14 Winkly Mark (ANNON: Sure. 15 break? 16 MR. CANNON: Sure. 17 HEW TINESS. Yes. 18 MR. CANNON: Sure. 18 BYMR, DAMSTEDT: Is this a good time for a 18 break? 18 BYMR, DAMSTEDT: 18 bris a good time for a 19 BYMR, DAMSTEDT: 18 bris a good time for a 19 BYMR, DAMSTEDT: 18 bris a good time for a 19 BYMR, DAMSTEDT: 18 bris a good time for a 19 BYMR, DAMSTEDT: 18 bris a good time for a 19 BYMR, DAMSTEDT: 10 A Yes. 19 BYMR, DAMSTEDT: 10 A Yes. 19 BYMR, DAMSTEDT: 10 A Yes seen something like it. 10 A Well, I we seen something like it. 10 A Well, I we seen something like it. 10 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts and graphs. 1 A Well, I we seen these charts an				20200111201	
2		Page 38	control of the same	Page 4	40
2	1	protease prior to 1992?	1	O Well, that's the question for you. Did you	
3 Q What is HAART therapy? 4 A The letters mean highly active 5 antirectroviral therapy. 6 Q Other than defining or spelling out what the 7 acronym means, can you describe HAART therapy more 8 generally? 9 A It refers to therapy using drugs that are 10 effective against HIV infection. 11 Q Okay. Are diecyoxy nucleicides (phonetic) 12 used in HAART therapy? 13 A Yes. 14 MR. DAMSTEDT: Is this a good time for a 15 break? 16 MR. CANNON: Sure. 17 THE WITNESS: Yes. 18 (Break taken.) 19 BY MK. DAMSTEDT: 20 Q I'll like to put before you the '730 patent 21 which was marked previously in the earlier deposition 23 as, I believe Exhibit 69s. 24 A I've seen something like it. 25 Q What do you mean by that? 26 A Yes. 27 A Yes seen something like it. 28 Q Can you confirm that you have read the U.S. 29 A Yes. 20 Q And is this a copy of what I'll call the 29 '730 patent? 20 A Yes. 21 Q You reviewed this document. 21 don't know if it's this exact document. 22 deposition, correct? 23 A Yes. 24 A Yes. 25 Q And is this a copy of what I'll call the 27 '730 patent? 28 MR. CANNON: Objection. The document is 29 what it is. 20 Q I'm reviewing this document, did you come to 20 an opinion as to what the field of art that is 21 described in the patent? 22 deposition, correct? 23 A Yes. 24 A I've seen something like it. 25 Q I'm give give give give give give give give	2		1		
A The letters mean highly active antiretowiral therapy. Q Other than defining or spelling out what the acromym means, can you describe HAART therapy more generally? A It refers to therapy using drugs that are effective against HIV infection. Q Okay. Are dictyoxy nucleicides (phonetic) used in HAART therapy. A Yes. MR. CANNON: Objection to object to the form of the question. Lacks foundation. A Yes. MR. CANNON: Objection to object to the form of the question. Control of an opinion as to what a tis. MR. CANNON: Objection to object to the form of the question. Control of an opinion as to what a tis. MR. CANNON: Objection to object to the form of the question. Lacks foundation. A It refers to therapy using drugs that are effective gainst HIV infection. A Yes. MR. CANNON: Objection. Lacks foundation. MR. CANNON: Objection. Lacks foundation. A No. 1 not, not for art. Hinght be a field of for of science. MR. CANNON: Objection. Lacks foundation. MR. CANNON: Objection. Lacks foundation. A No. 1 not, not for art. Hinght be a field of for of science. MR. CANNON: Objection. Lacks foundation. A No. 1 not, not for art. Hinght be a field of for of science. MR. CANNON: Objection. Lacks foundation. A No. 1 not, not for art. Hinght be a field of for of science. MR. CANNON: Objection. Lacks foundation. Page 39 A Well, I've seen this document before? A Ves. Patent No. 5 968,730 before your deposition? A Yes.	3	Q What is HAART therapy?	3		
6 O Other than defining or spelling out what the acrorym means, can you describe HAART therapy more generally? 8 generally? 9 A It refers to therapy using drugs that are effective against HIV infection. 11 Q Okay. Are dietyoxy nucleicides (phonetic) used in HAART therapy? 12 used in HAART therapy? 13 A Yes. 14 MR. DAMSTEDT: Is this a good time for a 15 break? 15 break? 16 MR. CANNON: Sure. 17 THE WITNESS: Yes. 18 (Break taken.) 19 BY MR. DAMSTEDT: 10 Q I'd like to put before you the '730 patent which was marked previously in the earlier deposition 2a 3, I believe Exhibit 695. 23 Have you seen this document before? 24 A I've seen something like it. 25 Q What do you mean by that? Page 39 1 A Well, I've seen these charts and graphs. I 2 don't know if it's this exact document. 24 Q And is this a copy of what I'll call the 7 730 patent? 25 Q And is this a copy of what I'll call the 7 730 patent? 26 Q And is this a copy of what I'll call the 7 730 patent? 27 MR. CANNON: Objection. Lacks foundation. 28 A Yes. 29 Q No reviewed this document before your deposition, correct? Page 39 1 A Yes. 20 Q The area of science, and that's what I would an	4		4		
6 on based on any understanding or opinion as to what researched acronym means, can you describe HAART therapy more generally? A It refers to therapy using drugs that are effective against HIV infection. Q Okay. Are dictyoxy nucleicides (phonetic) used in HAART therapy? A Yes. MR. DAMSTEDT: Is this a good time for a break? MR. DAMSTEDT: Is this a good time for a break? MR. CANNON: Sure. TILE WITNESS: Yes. (Break taken.) BYMR. DAMSTEDT: Is this a good time for a twick was marked previously in the earlier deposition as, I believe Exhibit 695. A I've seen something like it. Q What do you mean by that? Page 39 A Well, I've seen these charts and graphs. I don't know if it's this exact document. Q Can you confirm that you have read the U.S. Page 39 A Well, I've seen these charts and graphs. I don't know if it's this exact document. Q Can you confirm that you have read the U.S. Patent No. 5/968,730 before your deposition? A Yes. Q And is this a copy of what I'll call the 730 patent? A Yes. Q On reviewed this document before your deposition, correct? A Yes. Q You reviewed this document before your deposition, correct? A Yes. Q On reviewed this document before your deposition, correct? A Yes. Q You reviewed this document before your deposition, correct? A Yes. Q On reviewed this document before your deposition, correct? A Yes. Q On reviewed this document before your deposition, correct? A Yes. Q On reviewed this document before your deposition, or an opinion as to what the field of art that is described in this patent is? A Yes. Q On reviewed this document before your adoption, or the question. A I'm - I think I have defined art as best I can for laboratory performance of PCR and for patient care. Q On what it is. Goal and an answer of you can. A Yes. To a large extent, yes. Q Okay. What do you mean by to a large testing and the treating performance of PCR and for patient care. Q Okay. What do you mean by to a large testing a dark that is the correct? A Yes. Goal and a naryer if	5	antiretroviral therapy.	5	Q So your opinions in your Declaration were	
8 generally? 9 A It refers to therapy using drugs that are effective against HIV infection. 10 effective against HIV infection. 11 Q Okay. Are dictyoxy nucleicides (phonetic) 12 used in HAART therapy? 13 A Yes. 14 MR. DAMSTEDT: Is this a good time for a 15 break? 16 MR. CANNON: Sure. 17 THE WITNESS: Yes. 18 (Break taken.) 19 BY MR. DAMSTEDT: 20 Q I'd like to put before you the '730 patent 21 which was marked previously in the carlier deposition 22 as, I believe Exhibit 695. 23 Have you seen this document before? 24 A I've seen something like it. 25 Q What do you mean by that? 26 A Well, I've seen these charts and graphs. I don't know if it's this exact document. 27 Q Can you confirm that you have read the U.S. 28 Patent No. 5,968,730 before your deposition? 29 A Yes. 20 Q And is this a copy of what I'll call the 20 Tay Or reviewed this document before your deposition, cornect? 21 A Yes. 22 Q And is this a copy of what I'll call the 23 of an opinion as to what the field of art that is described in this patent is? 24 MR. CANNON: Objection. The document is what it is. 25 G Did you come to an opinion about that because it's not a phrase I use. 26 Q Did you come to an opinion about the field of art that is described in the patent? 27 MR. CANNON: Objection. Asked and answered. 28 A Yes. 29 Q Did you come to an opinion about the field of art that is described in the patent? 29 Q Did you come to an opinion about the field of art that is described in the patent? 29 Q Did you come to an opinion about the field of art that is described in the patent? 29 Q Did you come to an opinion about the field of art that is described in the patent? 29 Q Did you come to an opinion about the field of art that is described in the patent? 29 Q Did you come to an opinion about the field of art that is described in the patent? 29 Q Did you come to an opinion about the field of art that is described in the patent? 29 Q Did you come to an opinion about the field of art that is described in the patent? 29 Q Did you come to an opinion about th	6	Q Other than defining or spelling out what the	6		
A firefers to therapy using drugs that are effective against HIV infection. Q Okay. Are dietyoxy nucleicides (phonetic) used in HAART therapy? A Yes. MR. DAMSTEDT: Is this a good time for a break? MR. CANNON: Sure. THE WITNESS: Yes. MR. GANNON: Sure. THE WITNESS: Yes. MRI DAMSTEDT: MRI DAMSTEDT: MRI CANNON: Sure. THE WITNESS: Yes. MRI DAMSTEDT: MRI CANNON: Objection. Lacks foundation. MRI DAMSTEDT: MRI CANNON: Objection. The document is which was marked previously in the earlier deposition at A Ves. What do you mean by that? Page 39 Page 41 A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Ves. Q Can you confirm that you have read the U.S. A Yes. Q And is this a copy of what I'll call the Torap patent? A Yes. Q In reviewing this document before your deposition, correct? A Yes. Q I've reviewed this document before your deposition, correct? A Well, I've seen these charts and graphs. I don't know if it's this exact document. MRI CANNON: Objection. The document is what it is. MRI CANNON: Objection. The document is what it is. MRI CANNON: Objection. Asked and answered. A Your going to have to break it down. The art of You're using that term art and pain, and I am upset about that because it's not a phrase I use. MRI CANNON: Objection. Lacks foundation. MRI CANNON: Objection that is it described in the patent is? A Yes. Q Did you come to an opinion about the field of or the or of science. Q So in your Declaration, you offer a number of opinion, correct? A Uh-hub. Q But you did not, or at least I think you said that you did not come to an opinion as to what the field of art that is your opinion that the treating physician is the person who evaluates the effectiveness of the antirectorial agent, correct? MRI CANNON: Objection. Lacks foundation. A Nour point hat you come to an opinion about the field of or art hat is described in the patent is? A Yes. Q Did you come	i		7	the field of art in the patent was; is that correct?	
10 Cokay. Are diecroxy nucleicides (phonetic) 10 A I'm not sure exactly how to answer your, vour question. You're asking about art, and that's where I'm having trouble. What do you mean by art? 13 A res. 14 MR. DAMSTEDT: Is this a good time for a break? 15 MR. CANNON: Sure. 16 MR. CANNON: Sure. 16 MR. CANNON: Sure. 16 MR. CANNON: Objection. Lacks foundation. 17 MR. CANNON: Objection. Lacks foundation. 18 MR. CANNON: Objection. The document is what it is. 10 A I'm not sure exactly how to answer your, vour question. You're asking about art, and that's where I'm having trouble. What do you mean by art? 18 MR. CANNON: Objection. Lacks foundation. 18 MR. CANNON: Objection. 18 MR. CANNON: Objection. 19 MR. CANNON: Objection. 19	ł		8		
11	i		3		
12 used in HAART therapy?	l		1		
A Yes. MR. DAMSTEDT: Is this a good time for a break? MR. CANNON: Sure. 16 MR. CANNON: Sure. 17 THE WITNESS: Yes. 18 (Break taken.) 19 BY MR. DAMSTEDT: 20 Q I'd like to put before you the '730 patent which was marked previously in the earlier deposition as the leive Exhibit 695. 23 Have you seen this document before? 24 A I've seen something like it. 25 Q What do you mean by that? Page 39 1 A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Yes. Q And is this a copy of what I'll call the 77 730 patent? MR. CANNON: Objection. The document is what it is. A Yes. Q You reviewed this document before your deposition, correct? MR. CANNON: Objection. The document is what it is. A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in the patent is? MR. CANNON: Objection. Asked and answered. A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in the patent is? MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. 13 Q Clay do you come to an opinion about the field of art that is described in the patent is? A Well, I think the patient probably has to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. 24 Q Did you come to an opinion about the field of art that is described in the patent? 25 Q Did you come to an opinion about the field of art that is described in the patent? 26 Q Did you come to an opinion about the field of art that is described in the patent is? 27 A Well, I guess anybody can have an opinion, but I think it's the physician is the presonable for this judgment. 28 Q Oday. What a tartors were considered in evaluating effectiveness of antiretroviral agents in the patent is the one that is	ł		1		
MR. DAMSTEDT: Is this a good time for a break? MR. CANNON: Sure. THE WITNESS: Yes. Regard taken.) Page 39 Page 39 Page 39 A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Well, I've seen these charts and graphs. I don't know if it's this exact document. A Yes. A Wes. A Yes. A Well, I think the patient probably has to nopinion about whether the drug they take is good for them. B A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase. I use. Q Did you come to an opinion about the field of art that is described in the patent; is that correct? A No. I - not, not for art. It might be a field of - for - of science. Q So in your Declaration, you offer a number of opinion, correct? A No. I- not, not for art. It might be a field of - for - of science. Q So in your Declaration, you offer a number of opinion, correct? A No. I- not, not for art. It might be a field of - for - of science. Q So in your Declaration, you offer a number of opinion, correct? A No. I-not, not for art. It might be a field of - for - of science. Q So in your Declaration, you offer a number of opinion, correct? A Well, Purbul. A No. I-not, not for art. It might be a field of - for - of science.	ı	* *	1		
15 break?			1		
MR. CANNON: Sure. THE WITNESS: Yes. (Break taken.) BY MR. DAMSTEDT: Vhich was marked previously in the earlier deposition as, I believe Exhibit 695. Have you seen this document before? A I've seen something like it. Q What do you mean by that? Page 39 A Well, I've seen these charts and graphs. I don't know if it's this exact document. Q Can you confirm that you have read the U.S. A Yes. Q And is this a copy of what I'll call the what it is. Q And is this a copy of what I'll call the deposition, correct? MR. CANNON: Objection. The document is what it is. Q You reviewed this document before your deposition, correct? MR. CANNON: Objection. Asked and answered. A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? MR. CANNON: Objection. Asked and answered. A Yes. Q In reviewing this document, did you come to an opinion about the field of art that is described in this patent is? A Youre going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? A Well, I guess anybody can have an opinion, a very considered in the patent? A Well, I think the patient probably has to 1 have an opinion about whether the drug they take is 2 ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, 2 very considered in 2 volution. Cacks foundation. A Pos. To a large extent, yes. A Well, I think the patient probably has to 1 have an opinion about whether the drug they take is 2 vultimately responsible for this judgment. A Well, I guess			1		
THE WITNESS: Yes. (Break taken.) (So in your Declaration, you offer a number of opinions, correct? A Uh-huh. (22 Q But you did not come to an opinion as to what field of art was described in the patent; is that correct? 24 A Well, I've seen these charts and graphs. I don't know if it's this exact document. 25 Can you confirm that you have read the U.S. 4 Patent No. 5,968,730 before your deposition? A Yes. Q And is this a copy of what I'll call the '730 patent? MR. CANNON: Objection. The document is what it is. Q You reviewed this document before your deposition, correct? A Uh-huh. 26 Dat Uyou did not come to an opinion as to what field of art was described in the patent; is that correct? Take the under the patent; is that you did not come to an opinion as to what a side that you did not come to an opinion as to what a side that you did not come to an opinion as to what a field of art was described in the patent; is that 27 Daylou of patent was described in the patent; is that 28 Daylou did not come to an opinion as to what a field of art was described in the patent; is that 29 Can you confirm that you have read the U.S. A Pres. To a large extent, yes. Q Okay. What do you mean by to a large extent, yes. Q Okay. What do you mean by to a large extent? A Well, I yes eas the set of an opinion about the fi			}		
18 (Break taken.) 19 BY MR. DAMSTEDT: 20 Q I'd like to put before you the '730 patent which was marked previously in the earlier deposition 22 as, I believe Exhibit 695. 21 Have you seen this document before? 22 A I've seen something like it. 23 Have you seen this document before? 24 A I've seen something like it. 25 Q What do you mean by that? Page 39 Page 39 Page 41 1 A Well, I've seen these charts and graphs. I don't know if it's this exact document. 3 Q Can you confirm that you have read the U.S. 4 Patent No. 5,968,730 before your deposition? 5 A Yes. 6 Q And is this a copy of what I'll call the 7730 patent? 8 MR. CANNON: Objection. The document is what it is. 9 what it is. 10 A Yes. 11 Q You reviewed this document before your deposition, correct? 12 deposition, correct? 13 A Yes. 4 Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The art of what? The art of? You're using that term art agin, and I am upset about that because it's not a phrase I use. 20 Q Did you come to an opinion about the field of art that is described in the patent? 21 A Uh-huh. 22 But you did not, or at least I think you correct? 24 field of art was described in the patent; is that correct? 25 In MR. CANNON: Objection. Misstates prior 26 testimony. Lacks foundation. Asked and answered. 26 Q I'm just going to go on. It is your opinion that the treating 36 phrase I use. 27 Q Okay. What do you mean by to a large extent, yes. 28 A Well, I think the patient probably has to 37 have an opinion about whether the drug they take is 38 good for them. 39 A Yes. To a large extent, yes. 40 Q I'm just going to go on. It is your opinion that the treating 37 have an opinion about whether the drug they take is 38 good for them. 30 A Yes. To a large extent, yes. 41 A Well, I think the patient probably has to 38 have an opinion about whether the drug they take is 39 good for them. 31 A Well,			i		
19 BY MR. DAMSTEDT: Q I'd like to put before you the '730 patent which was marked previously in the earlier deposition as, I believe Exhibit 695. 3 Have you seen this document before? 24 A I've seen something like it. Q What do you mean by that? Page 39 A Well, I've seen these charts and graphs. I don't know if it's this exact document. Q Can you confirm that you have read the U.S. Patent No. 5,968,730 before your deposition? A Yes. Q And is this a copy of what I'll call the '730 patent? MR. CANNON: Objection. The document is what it is. A Yes. Q In reviewed this document before your deposition, correct? MR. CANNON: Objection. The document of the antiertroviral agent, correct? MR. CANNON: Object to the form of the question. G oa head and answer if you can. A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? A You're going to have to break it down. The art of what? The art of? You're using that term art adain, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent; MR. CANNON: Objection. Lacks foundation. 19 Q So in your Declaration, you offer a number of opinions, correct? A Uh-huh. Q But you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or at least I think you said that you did not, or			}		2000
Q I'd like to put before you the '730 patent which was marked previously in the earlier deposition 2 as, I believe Exhibit 695. Have you seen this document before? A I've seen something like it. Page 39 Page 39 Page 39 Page 41 A Well, I've seen these charts and graphs. I don't know if it's this exact document. Q Can you confirm that you have read the U.S. A Yes. Q And is this a copy of what I'll call the 730 patent? MR. CANNON: Objection. The document is what it is. Q You reviewed this document before your deposition, correct? A Yes. Q You reviewed this document before your deposition, correct? A Yes. Q You reviewed this document before your deposition, correct? A Yes. Q You reviewed this document before your deposition, correct? A Yes. Q You reviewed this document, did you come to an opinion as to what the field of art that is described in this patent is? A Yes. Q You're going to have to break it down. The art of What? The art of? You're using that term art of what? So was a point on about whether the drug they	i .		ř.		
which was marked previously in the earlier deposition s, I believe Exhibit 695. Have you seen this document before? A I've seen something like it. Q What do you mean by that? Page 39 Page 39 A Well, I've seen these charts and graphs. I on't know if it's this exact document. Q Can you confirm that you have read the U.S. Patent No. 5,968,730 before your deposition? A Yes. Q And is this a copy of what I'll call the '730 patent? MR. CANNON: Objection. The document is what it is. Q You reviewed this document before your deposition, correct? MR. CANNON: Object to the form of the described in the patent; is that correct? Page 41 MR. CANNON: Objection. Misstates prior testimonal. Lacks foundation. Asked and answered. A Yes. Q I'm just going to go on. It is your opinion that the treating physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? MR. CANNON: Object to the form of the question. G ahead and answer if you can. A Yes. To a large extent, yes. Q Okay. What do you mean by to a large extent! A You're going to have to break it down. The art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term art of what? The art of? You're using that term of the turn. A Well, I thin	20	Q I'd like to put before you the '730 patent	20		
Have you seen this document before? A I've seen something like it. D What do you mean by that? Page 39 Page 39 A Well, I've seen these charts and graphs. I don't know if it's this exact document. Q Can you confirm that you have read the U.S. Patent No. 5,968,730 before your deposition? A Yes. Q And is this a copy of what I'll call the what it is. A Yes. Q And is this a copy of what I'll call the what it is. A Yes. Q You reviewed this document before your deposition, correct? A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in the patent; is that correct? MR. CANNON: Objection. Misstates prior testimony. Lacks foundation. Asked and answered. A I'm I think I have defined art as best I can for laboratory performance of PCR and for patient care. Q I'm just going to go on. It is your opinion that the treating physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? MR. CANNON: Object to the form of the question. Go ahead and answer if you can. A Yes. To a large extent, yes. Q Okay. What do you mean by to a large extent. A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. Q Anybody else? A Well, I think it's the physician that is the one that is ultimately responsible for this judgment. Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in	21		21		
A I've seen something like it. Q What do you mean by that? Page 39 Page 41 A Well, I've seen these charts and graphs. I don't know if it's this exact document. Q Can you confirm that you have read the U.S. Patent No. 5,968,730 before your deposition? A Yes. Q And is this a copy of what I'll call the what it is. MR. CANNON: Objection. The document is what it is. MR. CANNON: Objection. The document is what it is. Q You reviewed this document before your deposition, correct? A Yes. Q In reviewing this document, did you come to an opinion about the field of art that is described in this patent; is that correct? A Yes. Q In reviewing this document, did you come to an opinion about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? A Well, I was described in the patent; is that correct? MR. CANNON: Objection. Misstates prior testimony. Lacks foundation. Asked and answered. A I'm — I think I have defined art as best I can for laboratory performance of PCR and for patient care. Q I'm just going to go on. It is your opinion that the treating physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? MR. CANNON: Object to the form of the question. Go ahead and answer if you can. A Yes. To a large extent, yes. Q Okay. What do you mean by to a large extent, yes. A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. Q Did you come to an opinion about the field of art that is described in the patent? A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in	22	as, I believe Exhibit 695.	22	Q But you did not, or at least I think you	
Page 39 A Well, I've seen these charts and graphs. I don't know if it's this exact document. Q Can you confirm that you have read the U.S. A Yes. Q And is this a copy of what I'll call the what it is. MR. CANNON: Objection. The document is what it is. A Yes. Q You reviewed this document before your deposition, correct? A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The art of what? The art of? You're using that term art aphrase I use. Q Did you come to an opinion about the field of art that is described in the patent? MR. CANNON: Objection. Lacks foundation. DAYES. MR. CANNON: Objection. Misstates prior testimony. Lacks foundation. Asked and answered. A I'm I think I have defined art as best I can for laboratory performance of PCR and for patient care. C Q I'm just going to go on. It is your opinion that the treating physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? MR. CANNON: Object to the form of the question. Go ahead and answer if you can. A Yes. To a large extent, yes. Q Okay. What do you mean by to a large extent!? A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. Q Anybody else? A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in			23	said that you did not come to an opinion as to what	
Page 39 1			Į		
1 A Well, I've seen these charts and graphs. I 2 don't know if it's this exact document. 3 Q Can you confirm that you have read the U.S. 4 Patent No. 5,968,730 before your deposition? 5 A Yes. 6 Q And is this a copy of what I'll call the 7 '730 patent? 8 MR. CANNON: Objection. The document is 9 what it is. 10 A Yes. 11 Q You reviewed this document before your 12 deposition, correct? 13 A Yes. 14 Q In reviewing this document, did you come to 15 an opinion as to what the field of art that is 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 10 again, and I am upset about that because it's not a 11 phrase I use. 12 Q Did you come to an opinion about the field 13 of art that is described in the patent? 14 MR. CANNON: Objection. Misstates prior testimony. Lacks foundation. Asked and answered. 15 A I'm I think I have defined art as best I can for laboratory performance of PCR and for patient care. 16 Q I'm just going to go on. 17 It is your opinion that the treating physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? 10 MR. CANNON: Object to the form of the question. 11 A Yes. To a large extent, yes. 12 Q Okay. What do you mean by to a large extent? 13 A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. 14 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 15 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 15 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 16 A Well, I guess anybody can have an opinion about the field of art that is described in the patent? 12 A Well, I guess anybody can have an opinion of the da	25	Q What do you mean by that?	25	correct?	
don't know if it's this exact document. Q Can you confirm that you have read the U.S. Patent No. 5,968,730 before your deposition? A Yes. Q And is this a copy of what I'll call the MR. CANNON: Objection. The document is what it is. Q You reviewed this document before your deposition, correct? A Yes. Q I'm just going to go on. It is your opinion that the treating physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? MR. CANNON: Object to the form of the question. Go ahead and answer if you can. A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them.		Page 39		Page 4	11
don't know if it's this exact document. Q Can you confirm that you have read the U.S. Patent No. 5,968,730 before your deposition? A Yes. Q And is this a copy of what I'll call the MR. CANNON: Objection. The document is what it is. Q You reviewed this document before your deposition, correct? A Yes. Q I'm just going to go on. It is your opinion that the treating physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? MR. CANNON: Object to the form of the question. Go ahead and answer if you can. A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them.	1	A Well, I've seen these charts and graphs. I	1	MR. CANNON: Objection. Misstates prior	
4 Patent No. 5,968,730 before your deposition? 5 A Yes. 6 Q And is this a copy of what I'll call the 7 '730 patent? 8 MR. CANNON: Objection. The document is 9 what it is. 9 What it is. 10 A Yes. 11 Q You reviewed this document before your 12 deposition, correct? 13 A Yes. 14 Q In reviewing this document, did you come to 15 an opinion as to what the field of art that is 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 20 again, and I am upset about that because it's not a 21 phrase I use. 22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Objection. Lacks foundation. 4 can for laboratory performance of PCR and for patient care. 5 care. 6 Q I'm just going to go on. 1t is your opinion that the treating 9 physician is the person who evaluates the 9 effectiveness of the antiretroviral agent, correct? 10 MR. CANNON: Object to the form of the question. 11 Q Okay. What do you mean by to a large 12 extent? 13 A Well, I think the patient probably has to 14 have an opinion about whether the drug they take is good for them. 15 again, and I am upset about that because it's not a phrase I use. 16 Q Did you come to an opinion about the field 17 have an opinion about whether the drug they take is good for them. 18 Q Anybody else? 19 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 27 Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in	2		2		
5 care. 6 Q And is this a copy of what I'll call the 7 '730 patent? 8 MR. CANNON: Objection. The document is 9 what it is. 10 A Yes. 11 Q You reviewed this document before your 12 deposition, correct? 13 A Yes. 14 Q In reviewing this document, did you come to 15 an opinion as to what the field of art that is 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 19 Q Did you come to an opinion about the field 20 Of art that is described in the patent? 21 Q Did you come to an opinion about the field 22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Objection. Lacks foundation. 25 Care. 6 Q I'm just going to go on. 77 It is your opinion that the treating physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? 10 MR. CANNON: Object to the form of the question. 11 question. 12 Q Okay. What do you mean by to a large extent? 13 A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. 15 Q Anybody else? 16 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 16 Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in	3		3	A I'm I think I have defined art as best I	
6 Q And is this a copy of what I'll call the 7 '730 patent? 8 MR. CANNON: Objection. The document is 9 what it is. 10 A Yes. 11 Q You reviewed this document before your 12 deposition, correct? 13 A Yes. 14 Q In reviewing this document, did you come to 15 an opinion as to what the field of art that is 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 19 again, and I am upset about that because it's not a 10 Phrase I use. 11 Q I'm just going to go on. 12 It is your opinion that the treating 18 physician is the person who evaluates the 9 effectiveness of the antiretroviral agent, correct? 10 MR. CANNON: Object to the form of the 11 question. 12 Go ahead and answer if you can. 13 A Yes. To a large extent, yes. 14 Q Okay. What do you mean by to a large extent? 15 A Well, I think the patient probably has to 16 have an opinion about whether the drug they take is good for them. 17 A Well, I guess anybody can have an opinion, 18 physician is the person who evaluates the 19 effectiveness of the antiretroviral agent, correct? 10 MR. CANNON: Object to the form of the 11 question. 12 Go ahead and answer if you can. 13 A Yes. To a large extent, yes. 14 Q Okay. What do you mean by to a large extent? 15 A Well, I think the patient probably has to 16 have an opinion about whether the drug they take is good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, 21 but I think it's the physician that is the one that is ultimately responsible for this judgment. 22 Q Okay. What factors were considered in 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in				can for laboratory performance of PCR and for patient	
7 '730 patent? 8 MR. CANNON: Objection. The document is 9 what it is. 10 A Yes. 11 Q You reviewed this document before your 12 deposition, correct? 13 A Yes. 14 Q In reviewing this document, did you come to 15 an opinion as to what the field of art that is 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 20 again, and I am upset about that because it's not a 21 phrase I use. 22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Objection. Lacks foundation. 27 It is your opinion that the treating 8 physician is the person who evaluates the 9 effectiveness of the antiretroviral agent, correct? 10 MR. CANNON: Object to the form of the 11 question. 12 Go ahead and answer if you can. 13 A Yes. To a large extent, yes. 14 Q Okay. What do you mean by to a large 15 extent? 16 A Well, I think the patient probably has to 17 have an opinion about whether the drug they take is 18 good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, 21 but I think it's the physician that is the one that is 22 ultimately responsible for this judgment. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in			!		
MR. CANNON: Objection. The document is what it is. A Yes. Q You reviewed this document before your deposition, correct? A Yes. In reviewing this document, did you come to an opinion as to what the field of art that is A You're going to have to break it down. The art of what? The art of? You're using that because it's not a phrase I use. Q Did you come to an opinion about the field A You're going to have an opinion about the field A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field AR. CANNON: Objection. Lacks foundation. B physician is the person who evaluates the effectiveness of the antiretroviral agent, correct? MR. CANNON: Object to the form of the question. C Go ahead and answer if you can. A Yes. To a large extent, yes. A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. Q Anybody else? A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is Ultimately responsible for this judgment. Q Okay. What factors were considered in effectiveness of the antiretroviral agent, correct? MR. CANNON: Object to the form of the question. A Yes. To a large extent, yes. A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. D A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is Ultimately responsible for this judgment. Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in					
9 what it is. 10 A Yes. 11 Q You reviewed this document before your 12 deposition, correct? 13 A Yes. 14 Q In reviewing this document, did you come to 15 an opinion as to what the field of art that is 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 20 again, and I am upset about that because it's not a 21 phrase I use. 22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Object to the form of the question. 12 Go ahead and answer if you can. 13 A Yes. To a large extent, yes. 14 Q Okay. What do you mean by to a large extent? 15 A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 23 Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agent, correct? MR. CANNON: Object to the form of the question. 12 Go ahead and answer if you can. 13 A Yes. To a large extent, yes. 14 Q Okay. What do you mean by to a large extent? 15 have an opinion about whether the drug they take is good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 24 Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in					
10 A Yes. 11 Q You reviewed this document before your 12 deposition, correct? 13 A Yes. 14 Q In reviewing this document, did you come to 15 an opinion as to what the field of art that is 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 20 again, and I am upset about that because it's not a 21 phrase I use. 22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Object to the form of the question. 15 Q ahead and answer if you can. 16 A Yes. To a large extent, yes. 17 Q Okay. What do you mean by to a large extent? 18 A Well, I think the patient probably has to have an opinion about whether the drug they take is good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 23 Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in		· ·			
11 Q You reviewed this document before your 12 deposition, correct? 13 A Yes. 14 Q In reviewing this document, did you come to 15 an opinion as to what the field of art that is 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 20 again, and I am upset about that because it's not a 21 phrase I use. 22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Objection. Lacks foundation. 25 Go ahead and answer if you can. 26 A Yes. To a large extent, yes. 26 Q Okay. What do you mean by to a large extent? 27 A Well, I think the patient probably has to 28 A Well, I think the patient probably has to 29 Anybody else? 20 A Well, I guess anybody can have an opinion, 21 but I think it's the physician that is the one that is 22 ultimately responsible for this judgment. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in					
deposition, correct? A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? Q Did you come to an opinion about the field of art that is described in the patent? MR. CANNON: Objection. Lacks foundation.					
A Yes. Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? MR. CANNON: Objection. Lacks foundation.		· ·		•	
Q In reviewing this document, did you come to an opinion as to what the field of art that is described in this patent is? 16 described in this patent is? 17 MR. CANNON: Objection. Asked and answered. 18 A You're going to have to break it down. The art of what? The art of? You're using that term art 20 again, and I am upset about that because it's not a 21 phrase I use. 19 Q Okay. What do you mean by to a large 25 extent? 16 A Well, I think the patient probably has to 27 have an opinion about whether the drug they take is 28 good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, 21 but I think it's the physician that is the one that is 22 ultimately responsible for this judgment. 21 Q Okay. What do you mean by to a large 25 extent? 22 A Well, I think the patient probably has to 27 have an opinion about whether the drug they take is 28 good for them. 23 Q Anybody else? 24 Ultimately responsible for this judgment. 25 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in		=			
an opinion as to what the field of art that is described in this patent is? MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? MR. CANNON: Objection. Lacks foundation. 15 extent? 16 A Well, I think the patient probably has to 17 have an opinion about whether the drug they take is 18 good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, 21 but I think it's the physician that is the one that is 22 ultimately responsible for this judgment. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in				• • •	
described in this patent is? MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? MR. CANNON: Objection. Lacks foundation. 16 A Well, I think the patient probably has to 17 have an opinion about whether the drug they take is 18 good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, 21 but I think it's the physician that is the one that is 22 ultimately responsible for this judgment. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in					
MR. CANNON: Objection. Asked and answered. A You're going to have to break it down. The art of what? The art of? You're using that term art again, and I am upset about that because it's not a phrase I use. Q Did you come to an opinion about the field of art that is described in the patent? MR. CANNON: Objection. Asked and answered. 17 have an opinion about whether the drug they take is good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, but I think it's the physician that is the one that is ultimately responsible for this judgment. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in	16	•			2000
A You're going to have to break it down. The 19 art of what? The art of? You're using that term art 20 again, and I am upset about that because it's not a 21 phrase I use. 22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Objection. Lacks foundation. 18 good for them. 19 Q Anybody else? 20 A Well, I guess anybody can have an opinion, 21 but I think it's the physician that is the one that is 22 ultimately responsible for this judgment. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in	17	-			
20 again, and I am upset about that because it's not a 21 phrase I use. 22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Objection. Lacks foundation. 20 A Well, I guess anybody can have an opinion, 21 but I think it's the physician that is the one that is 22 ultimately responsible for this judgment. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in	18		18		
phrase I use. Q Did you come to an opinion about the field Of art that is described in the patent? MR. CANNON: Objection. Lacks foundation. 21 but I think it's the physician that is the one that is 22 ultimately responsible for this judgment. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in	19	art of what? The art of? You're using that term art	19	Q Anybody else?	
22 Q Did you come to an opinion about the field 23 of art that is described in the patent? 24 MR. CANNON: Objection. Lacks foundation. 25 Ultimately responsible for this judgment. 26 Q Okay. What factors were considered in evaluating effectiveness of antiretroviral agents in	20	-	20		2000000
23 of art that is described in the patent? 24 MR. CANNON: Objection. Lacks foundation. 23 Q Okay. What factors were considered in 24 evaluating effectiveness of antiretroviral agents in	21	•			
MR. CANNON: Objection. Lacks foundation. 24 evaluating effectiveness of antiretroviral agents in					
25 A The art of PCR? Of patient care? Of 25 1992?	25	A The art of PCR? Of patient care? Of	25	1992?	

22

23

24

25 important factor?

Q In evaluating effectiveness, is the

physician's subjective intent as to whether the

treatment was going to be effective or not an

Page 42 Page 44 A We wanted to know if the Cd4 count MR. CANNON: Object to the form of the 2 increased. We wanted to know if there was a new AIDS-2 question. defining event or death. We wanted to know if the 3 3 A I missed the first part of it. Physician's patient tolerated the medicine. And we wanted to know 4 4 what? 5 if the regimen was demanding to the point that 5 O Subjective intent. 6 patients struggled with adherence. 6 Let me restate the question. 7 Q Are there any other factors that were 7 A Yeah. 8 considered in evaluating effectiveness of 8 Q In evaluating effectiveness of 9 antiretroviral agents in 1992? 9 antiretroviral therapy, is the physician's subjective 10 A Well, I'm trying to think of when they 10 intent as to whether or not the therapy was going to 11 started doing the viral load testing, and I think that be effective important? 11 12 came a bit later. 12 MR. CANNON: Objection. Lacks foundation. 13 Q So today you would also include viral load 13 A I think you're asking me if the physician is 14 testing ---14 going to prescribe something they think works, and I 15 A Yes, I would. 15 would say that was important. 16 O -- in that? 16 Q In evaluating whether the antiretroviral 17 All right. Were there any other factors 17 agent was effective, does it matter whether the 18 that were considered in 1992? 18 physician thought it was going to be very effective, A I think I've covered the major ones. 19 19 thought it was only going to be kind of effective, or 20 Q Are there any others that you're aware of at 20 is the decision based on the objective and the 21 this point? tolerance, pill burden factors that we discussed 22 A I can't think of any right now. before? 22 23 Are ---Q 23 MR. CANNON: Objection. Compound question. A Oh, cost would be another. 24 24 Lacks foundation. 25 Q Cost? A I think physicians always -- almost always Page 43 Page 45 1 A Cost would be an issue. 1 prescribe drugs with some notion about whether they're 2 Are these factors objective? 2 likely to work, possibly going to work, or not likely 3 MR. CANNON: Object to the form of the 3 to work. Q In looking backward and evaluating whether 4 4 question. 5 A Most of them are objective. or not they were effective, is the physician's 6 Which ones are not objective? Q 6 prediction as to whether or not they were effective 7 7 A Tolerance. important, or is the fact as to whether or not it was 8 O And -effective important? 9 A Pill burden. 9 A For objective results, the results are 10 Q I'm sorry? 10 probably the most important. A Pill burden. 11 11 Q So I'm going to ask you just a couple of Q And how are those not objective? 12 hypotheticals, and if you don't understand them, A It's hard for us to know when a patient says 13 13 please let me know, or if you think there's something that a drug makes them tired, makes them sleepy, makes 14 14 missing, please let me know as well. 15 them nauseated. We don't have metrics. Gives them a 15 Suppose that an antiretroviral agent was headache. effective in reducing replication of HIV but was not 16 16 17 Q So those factors are not objective, but they quite as effective as the treating physician initially don't depend on the physician's subjective state of hoped and intended. In that situation would the 18 mind, do they? treatment be effective, or ineffective under the 19 19 A They require the patient's report to the 20 20 patents? physician. 21 21 MR. CANNON: Object. Incomplete

12 (Pages 42 to 45)

22

23

24

25

hypothetical. Lacks foundation.

Q Why is that?

A I can't answer a question about the patent

<u> </u>		The state of the s	
	Page 46	**************************************	Page 48
1	A Because I don't remember whether the,	1	Q Okay. Do you have an opinion as to what the
2	whether the patent specifically said the treating	2	phrase medical decision meant to a person of skill in
3	physician's impression versus an objective endpoint.	3	1992?
4	Q So sitting here today you do not have an	4	A The term medical decision?
5	opinion as to whether the patent term therapeutically	5	Q Yes.
6 7	effective refers to the physician's subjective intent	6	A It's I guess it's a term that I would use
8	or objective factors? MR. CANNON: Objection.	7	and not necessarily try to define. Did you want me to define it?
9	Q Is that your opinion?	9	Q Do you have an opinion as to what it means?
10	MR. CANNON: Objection. Misstates	10	A I think it's when someone makes a decision
11	testimony.	11	that has in a medical context.
12	A Well, you I thought you asked me a	12	Q What does medical context mean to you?
13	different question.	13	A Well, it means in I think in, I think
14	Q Okay.	14	medical has a connotation in terms of medical care, so
15	A I thought you asked me about a physician's	15	that it could be a medical decision to send a patient
16	preconceived notions about whether a drug was going to	16	to a nursing home, medical decision to get a
17	work or not work, and what I said was I do not	17	laboratory test.
18	remember seeing that specifically stated in the	18	Q For purposes of the patents-in-suit, is it
19	patent. I did not see that the physician's	19	your opinion that treatment may not be modified if
20	preconceived notion about the drug determined whether	20	viral load testing suggests that an antiretroviral
21	it was therapeutically effective. The term	21	agent is effective?
22	therapeutically effective was there.	22	MR. CANNON: Object to the form of the
23	Q Is it true that the physician's intent is to	23	question.
24	improve the patient's clinical outcome?	24	A No.
25	A Yes.	25	Q That is not your opinion?
	Page 47		Page 49
1	Q What are some ways in which antiretroviral	1	A That it should not be modified?
2	therapy can improve a patient's clinical outcome?	2	Q That
3	MR. CANNON: Objection. Lacks foundation.	3	A Could we put it in a positive? It is
4	A For any disease, or for HIV?	4	Q Okay, I'll restate.
5	Q For HIV.	5	A Okay. To change the therapy even though it
6	A There are probably several parameters. One	6	is effective in stopping the virus?
7	is the patient's subjective impression of how they	7	Q All right well, let me rephrase that
8	feel. Second is objective observations, such as	8	question.
9 10	weight, fever. There are laboratory tests, such as the Cd4 count, the viral load, the large number of	9 10	A Okay.
11	laboratory studies, that indicate drug toxicity. All	11	Q Is it your opinion that it is okay to change the therapy even though it is effective in stopping
12	of those would be factors.	12	the virus?
13	Q Are there any others that you can think of?	13	A Yes.
14	A Well, cost I guess would be an additional	14	Q Why is that?
15	factor. Inconvenience, pill burden, requirement to	15	A Because or for a lot of reasons, many of
16	take food or not take food, the co-morbidities that	16	which I've talked about. For example, if the drug
17	interfere with the response, like hepatitis, the drug	17	causes a terrible side effect, we have to stop it.
18	interactions, because of the enormous number of them	18	That would be one example.
19	that we encounter. That's a list I can come up with	19	Q Are there any others?
20	at this moment.	20	A Well, if there's drug interactions, if it's
21	Q So are those all factors you consider in	21	a regimen that's impossible. If it's a treatment that
22	evaluating effectiveness, or are those ways in which	22	you can't afford. I mean there is there's a number
23	antiretroviral therapy can improve a patient's	23	of reasons.
24	clinical outcome?	24	Q Okay. On the flip side of that, is it your
25	A I think that those are synonymous.	25	opinion that antiretroviral treatment must be modified

13 (Pages 46 to 49)

·			
	Page 50		Page 52
1	if viral load testing suggests that it is ineffective?	1	A Yes.
2	MR. CANNON: Objection. Lacks foundation.	2	Q On Page 3
3	Object to the form of the question.	3	A Yes oh, I'm sorry, 3.
4	A The answer is no.	4	I'm there now.
5	Q And why is that?	5	Q Great. Up at the top it says Doctor
6	A It's complicated, but therapy that does not	6	Bartlett may testify that protease inhibitors and
7	work works.	7	HAART therapy (highly active antiretroviral therapy)
8	Q Could you explain that a little more?	8	were not available to those of skill in the art of
9	A Yes. Patients who have virologic failure	9	treating HIV patients and evaluating the effectiveness
10	and take antiretroviral drugs deteriorate when you	10	of therapy until after May 1992.
111	stop the drugs that have failed. The Cd4 count goes	11	Did I read that correctly?
12	down and the viral load goes up.	12	A Yes.
13	Q Is it also the case that a patient who fails	13	Q In your Declaration, did you state that
14	to adhere to a treatment regimen could cause an otherwise effective antiretroviral treatment to	14	protease inhibitors and HAART therapy were neither
16	register as ineffective according to a viral load	15 16	known nor available to persons to those of skill in
17		17	the art of treating HIV patients until well after May of 1992?
18	MR. CANNON: Objection. Lacks foundation.	18	MR. CANNON: Objection. The Declaration is
19	A Hard to answer in a legal sense. Do we say	19	what it is.
20	a drug is ineffective if someone doesn't take it,	20	A Yes.
21	that's what you're asking, and I'm not sure that that	21	Q Is that a new opinion?
22	would satisfy my definition of a drug failure. I	22	A No.
23	think every drug will fail if a patient doesn't take	23	MR. CANNON: Object to the form of the
24	it.	24	question.
25	Q So you could get a viral load test that	25	A By new, do you mean new with this case, or
	Page 51		Page 53
1	suggests that the drug is failing but in fact the drug	1	new with this today, or
2	is not failing because the patient is just simply not	2	Q New as in after the Disclosure, Exhibit 699,
3	taking the drug; is that correct?	3	was filed.
4	A Yes.	4	MR. CANNON: Object to the form of the
5	Q When did you come up with the opinions that	5	question. The documents speak for themselves.
6	are in your Declaration?	6	A I'm not exactly sure what you're saying. I
7	MR. CANNON: Object to the form of the	7	agree with this statement that protease inhibitors and
8	question. To the extent this is getting into	8	HAART therapy were not available, neither one of them.
ŧ	discovery that we agreed would not be part of the	9	Q Okay. My question is, is your opinion in
10	mutual expert discovery, I object.	i	your Declaration that neither were neither were
11	But please answer the question, if you can.	11	known or available new after the Disclosure? The
12	A I'm not good at recalling dates so I would	12	Disclosure says available. Your Declaration says
14	say probably three or four months ago. Q Do you recall looking at a Disclosure that	13 14	known or available. Is that additional opinion new? MR. CANNON: Object to the form of the
15	was filed with the Court explaining what your	15	question.
16	testimony might include?	16	A It says known in the art of treating HIV
17	A Yes.	17	infection and the term is HAART. And my opinion now
18	(Discussion off the record.)	18	is neither one of those, the phrase was not used, and
19	(Handing Exhibit No. 699.)	19	the effectiveness of protease inhibitors in treating
20	BY MR. DAMSTEDT:	20	patients with HIV infection was not known.
21	Q Have you had a chance to look at the	21	Q So my question is slightly different from
22	document?	22	that. It's I'm sorry if I've been vague about it.
23	A Yes, I have.	23	MR. CANNON: It's a trick question. You're
24	Q Is this the Disclosure that we were talking	24	trying to trick him.
25	about?	25	MR. DAMSTEDT: Come on, Brian.

14 (Pages 50 to 53)

	outil o. Britishin, in.b.		Depender 5, 2007
	Page 54	Part Auto-Daniel	Page 56
1 2	MR. CANNON: Trying to trick him. I mean ask the question, but go ahead.	1 2	ACKNOWLEDGMENT OF DEPONENT I, John G. Bartlett, M.D., do hereby acknowledge
3 4	Q So in your Declaration you say that protease inhibitors and HAART therapy were neither known nor	3	that I have read and examined the foregoing testimony,
5	available; is that correct?	5	and the same is a true, correct and complete transcription of the testimony given by me, and any
6	A Right.	6	corrections appear on the attached Errata sheet signed
7 8	Q And in the Disclosure it says that they were not available; is that correct?	7	by me.
9	A Yes.	8 9	
10	Q Is the additional part that they were not	10	
11	known, is that a new opinion that was made after your	11	
12	Disclosure? MP. CANNON: Object to the form of the	12	
14	MR. CANNON: Object to the form of the question. Lacks foundation. It's argumentative.	13 14	
15	A So we're breaking this down, and we're	15	
16	separating HAART and protease inhibitors?	16	
17	Q No. It would be separating known versus available.	17	
18 19	A They were not available for clinical care in	18 19	
20	1992, and HAART was a term that was not used in 1992.	20	
21	MR. DAMSTEDT: Okay. Do you mind if we take	21	
22	a break. MR. CANNON: No. Sure.	22 23	
24	(Break taken.)	24	
25	MR. DAMSTEDT: I appreciate your time. I'm	25	
	Page 55		Page 57
1	done for now.	1	CERTIFICATE OF SHORTHAND REPORTER/NOTARY PUBLIC
2	MR. CANNON: I don't have any questions for	2	I, Dawn M. Hart, Registered Professional
3 4	Doctor Bartlett, but we'd appreciate the opportunity to review the transcript consistent with the parties'	3 4	Reporter, the officer before whom the foregoing proceedings were taken, do hereby certify that the
5	agreement with the Federal Rules. Thank you.	5	foregoing transcript is a true and correct record of
6	(Signature having not been waived, the	6	the proceedings; that said proceedings were taken by
7	examination of John G. Bartlett, M.D., was concluded	7	me stenographically and thereafter reduced to
8 9	at 5:02 p.m.)	8	typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any
10			of the parties to this case and have no interest,
11			financial or otherwise, in its outcome.
12		12	IN WITNESS WHEREOF, I have hereunto set my hand
13 14		13	and affixed my notarial seal this 5th day of September 2007.
15		15	My Commission Expires:
16		16	January 1, 2009
17		17	
18 19		18 19	
20			NOTARY PUBLIC IN AND FOR THE
21		21	STATE OF MARYLAND
22		22	
23 24		23 24	
25		25	

15 (Pages 54 to 57)