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I N D E X

JUNE 14, 2018; P.M. SESSION

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1 CROSS-EXAMINATION.

2 SO YOU MAY PROCEED, MS. BONN.

3 MS. BONN: THANK YOU, YOUR HONOR.

4

5

CROSS-EXAMINATION

6

BY MS. BONN:

7

Q GOOD AFTERNOON, MR. BROWN.

8

A GOOD AFTERNOON. HOW ARE YOU?

9

Q I'M GOOD. HOW ABOUT YOURSELF?

10

A GOOD. THANK YOU.

11

Q THANK YOU. MY NAME IS AMANDA BONN, AND I'LL
12 BE ASKING YOU SOME QUESTIONS THIS AFTERNOON ON BEHALF
13 OF WYLE LABS.

14

NOW, AS YOU MENTIONED ON YOUR DIRECT
15 EXAMINATION, YOU WERE HIRED BY POSITRON'S COUNSEL IN
16 THIS CASE; IS THAT CORRECT?

17

A THAT'S CORRECT.

18

Q AND WHEN YOU WERE HIRED BY POSITRON'S
19 COUNSEL, THEY GAVE YOU A SPECIFIC ASSIGNMENT OF WHAT
20 THEY WANTED YOU TO DO; CORRECT?

21

A THAT'S CORRECT.

22

Q THE SPECIFIC ASSIGNMENT THAT POSITRON'S
23 COUNSEL GAVE YOU WAS TO EVALUATE TWO SPECIFIC
24 QUESTIONS; CORRECT?

25

A YOU'D HAVE TO TELL ME WHAT THOSE QUESTIONS
26 WERE BEFORE I CAN SAY THAT; OKAY?

27

Q ABSOLUTELY.

28

DIDN'T POSITRON'S COUNSEL ASK YOU TO

1 EVALUATE WHETHER THE N.D.E. MARKET HAS UTILIZED THE
2 TECHNOLOGY OF COMBINING PHASE CONTRAST X RAY WITH
3 TOMOSYNTHESIS TO DETECT ALUMINUM CORROSION?

4 A THAT'S CORRECT.

5 Q THAT WAS THE FIRST QUESTION THAT POSITRON'S
6 COUNSEL ASKED YOU TO CONSIDER; CORRECT?

7 A THAT'S CORRECT.

8 Q AND THE N.D.E. MARKET, THAT STANDS FOR
9 NONDESTRUCTIVE EVALUATION MARKET; IS THAT CORRECT?

10 A YES. ALSO GOES BY N.D.T., NONDESTRUCTIVE
11 TESTING.

12 Q NOW, THE SECOND QUESTION THAT YOU WERE ASKED
13 BY POSITRON'S COUNSEL TO CONSIDER WAS TO EVALUATE THE
14 TECHNICAL FEASIBILITY OF, QUOTE, "THE X-RAY CORROSION
15 INSPECTION SYSTEM (X.C.I.S.) THAT WAS DEVELOPED BY
16 POSITRON"; IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q AND, SO, POSITRON'S COUNSEL TOLD YOU TO
19 ASSUME THAT THE X-RAY CORROSION INSPECTION SYSTEM WAS
20 DEVELOPED BY POSITRON; IS THAT CORRECT?

21 A WELL, THAT'S WHAT THEY TOLD ME IN THE
22 STATEMENT, YES.

23 Q AND YOU DIDN'T ACTUALLY COME UP WITH YOUR
24 OWN FORMULATION OF THE QUESTIONS TO CONSIDER IN THIS
25 CASE. YOU ADDRESSED THE QUESTIONS THAT POSITRON'S
26 COUNSEL SPECIFICALLY ASSIGNED TO YOU; CORRECT?

27 A YES.

28 Q BUT, SIR, AS YOU BEGAN REVIEWING EVIDENCE IN

1 THIS CASE -- YOU MENTIONED REVIEWING DEPOSITIONS AND
2 DOCUMENTS -- YOU ACTUALLY CAME TO THE CONCLUSION THAT
3 VANDERBILT UNIVERSITY WAS RESPONSIBLE FOR THE KEY
4 TECHNOLOGICAL DEVELOPMENTS UNDERLYING THE X.C.I.S.
5 SYSTEM; CORRECT?

6 A I'D HAVE TO ELABORATE ON THAT A LITTLE BIT
7 BECAUSE I CAN'T ANSWER THAT QUESTION SPECIFICALLY.

8 YES, VANDERBILT DID DO THE WORK, BUT
9 POSITRON WENT TO VANDERBILT AND ENTERED A CONTRACT
10 WITH THEM, WHICH I'VE DONE, BEFORE WORKING WITH A
11 UNIVERSITY. IT'S NOT UNUSUAL.

12 POSITRON WENT TO VANDERBILT BECAUSE
13 VANDERBILT KNEW -- I MEAN, POSITRON KNEW THAT
14 VANDERBILT HAD THAT TECHNOLOGY; THAT THEY COULD HELP
15 THEM WITH THEIR PROCESS.

16 NOW, POSITRON ALREADY KNEW ABOUT PHASE
17 CONTRAST TECHNOLOGY THE PREVIOUS TIME. THEY HAD
18 HIRED A CONSULTANT EARLIER BECAUSE THEY WERE HAVING
19 PROBLEMS WITH THE LASER COMPTON SCATTERING PROCESS,
20 AND THEY DIDN'T HAVE THE -- THE RESULTS FROM THAT
21 PROCESS THEY WANTED, SO THEY HIRED A CONSULTANT THAT
22 DID SOME RESEARCH. THAT RESEARCH IDENTIFIED THE FACT
23 THAT THEY COULD GO TO VANDERBILT.

24 SO POSITRON DIDN'T GO TO VANDERBILT WITH NO
25 KNOWLEDGE OF THE PROCESS. THEY WENT TO VANDERBILT
26 KNOWING THAT THEY COULD USE THEIR TECHNOLOGY OR THEIR
27 ABILITY TO DO THAT. THEY BASICALLY HIRED VANDERBILT
28 TO DO THAT WORK.

1 SO, IN A SENSE THEY USED VANDERBILT, YES,
2 THEY DID, AND VANDERBILT DID THE WORK FOR THEM. BUT
3 IT WASN'T THE CASE WHERE THEY DIDN'T PARTICIPATE.

4 TIM WILSON PARTICIPATED IN THAT WORK. EVEN
5 THOUGH HE DIDN'T DO THE TESTING, HE DID PARTICIPATE.

6 Q DO YOU REMEMBER WHAT MY QUESTION WAS, SIR?

7 A YES.

8 Q WHAT WAS THE QUESTION?

9 A DID VANDERBILT DO ALL THE WORK.

10 Q AND, IN FACT, SIR, WHEN YOU WERE DEVELOPING
11 YOUR REPORT IN THIS CASE, YOU ADDRESSED SPECIFIC
12 ASPECTS OF THE X.C.I.S. TECHNOLOGY THAT YOU BELIEVED
13 WERE IMPORTANT TO ADDRESS; CORRECT?

14 A YES.

15 Q NOW, ONE OF THE ASPECTS OF X.C.I.S.
16 TECHNOLOGY THAT YOU BELIEVED WAS IMPORTANT TO ADDRESS
17 WAS THE IDEA TO COMBINE PHASE CONTRAST X RAY WITH
18 TOMOSYNTHESIS UNDERLYING THE X.C.I.S. SYSTEM;
19 CORRECT?

20 A YES.

21 Q AND THE DECISION TO COMBINE PHASE CONTRAST X
22 RAY WITH TOMOSYNTHESIS WAS MADE BY DR. DONNELLY AT
23 VANDERBILT; CORRECT?

24 A AMANDA, IF I READ THAT, I DON'T REMEMBER
25 THAT.

26 MS. BONN: YOUR HONOR, I'D LIKE TO PUBLISH
27 TO THE JURY A PORTION OF MR. BROWN'S DEPOSITION.
28 IT'S PAGE 46, LINES 11 THROUGH 18.

1 THE COURT: LET'S SEE. LET ME GET THERE
2 FIRST.

3 46/11 THROUGH 18. LET ME JUST FIND THAT.
4 IS THIS IN THIS BOOK HERE (INDICATING)?

5 MS. BONN: NO. IT'S A SEPARATE TRANSCRIPT
6 THAT I BELIEVE --

7 THE COURT: ALL RIGHT. SO THOSE ARE
8 EXHIBITS. I SEE. OKAY. HOLD ON.

9 MS. BONN: AND, YOUR HONOR, WE'RE AT PAGE
10 46, LINES 11 THROUGH 18.

11 THE COURT: OKAY. ANY OBJECTION TO THAT
12 BEING SHOWN?

13 MS. JOHNSON: NO, YOUR HONOR.

14 THE COURT: OKAY. YOU MAY PUBLISH THAT.

15 Q BY MS. BONN: MR. DONNELLY, I'M SHOWING THE
16 JURY A PORTION OF THE TRANSCRIPT FROM YOUR DEPOSITION
17 IN THIS CASE.

18 A I DON'T HAVE THAT IN THIS BOOK.

19 Q YES, SIR.

20 THE COURT: I'VE GOT IT HERE JUST IN CASE
21 YOU NEED TO LOOK AT IT.

22 Q BY MS. BONN: AND, SIR, I'M DIRECTING YOUR
23 ATTENTION TO PAGE 46, LINES 11 THROUGH 18. AND I
24 JUST ASK THAT YOU PLEASE READ ALONG SILENTLY WITH ME
25 AS I READ ALOUD TO THE JURY. (AS READ):

26 QUESTION. "THE DETERMINATION TO
27 PERFORM PHASE CONTRAST X RAY ON
28 ALUMINUM WAS MADE BY ED DONNELLY OF

1 VANDERBILT; CORRECT?"

2 ANSWER: "YES."

3 QUESTION: "OKAY. THE
4 DETERMINATION TO COMBINE PHASE
5 CONTRAST X RAY WITH TOMOSYNTHESIS
6 WAS MADE BY ED DONNELLY OF
7 VANDERBILT; CORRECT?"

8 ANSWER: "YES."

9 SIR, I READ THAT CORRECTLY; RIGHT?

10 A YES.

11 Q AND WHEN YOU TESTIFIED AT YOUR DEPOSITION,
12 YOU DID SO UNDER OATH; CORRECT?

13 A YES.

14 Q AND, SO, YOU WERE BEING CAREFUL TO TELL THE
15 TRUTH; RIGHT?

16 A YES.

17 Q NOW, IN ADDITION TO MAKING THE DETERMINATION
18 TO COMBINE PHASE CONTRAST X RAY WITH TOMOSYNTHESIS,
19 VANDERBILT UNIVERSITY ALSO DETERMINED THE OPTIMAL
20 PARAMETERS THAT WOULD BE NEEDED FOR THE X.C.I.S.
21 SYSTEM; CORRECT?

22 A YES.

23 Q POSITRON DIDN'T DO THAT; CORRECT?

24 MS. JOHNSON: OBJECTION. LACKS FOUNDATION,
25 YOUR HONOR.

26 THE COURT: WELL, HE CAN ANSWER IT IF HE
27 KNOWS.

28 DO YOU KNOW WHO DETERMINED THE OPTIMAL

1 PARAMETERS?

2 THE WITNESS: CAN YOU --

3 Q BY MS. BONN: SIR, YOU MADE THE CONCLUSION
4 THAT THE DETERMINATION OF THE OPTIMAL PARAMETERS
5 NEEDED FOR THE X.C.I.S. SYSTEM WAS DEVELOPED BY
6 VANDERBILT; CORRECT?

7 MS. JOHNSON: OBJECTION. LACKS FOUNDATION.

8 THE COURT: WELL, LET'S SEE WHAT HE SAYS.
9 HE CAN ANSWER THE QUESTION.

10 DID YOU DETERMINE THAT?

11 THE WITNESS: I DID, BUT IT WASN'T JUST
12 VANDERBILT'S WORK. POSITRON WAS WORKING WITH THEM.
13 POSITRON WAS -- HAD HIRED VANDERBILT.

14 SO WHATEVER VANDERBILT DID, POSITRON WAS
15 ASKING FOR THAT.

16 Q BY MS. BONN: WELL, SIR, YOU MENTIONED
17 SOMETHING EARLIER.

18 YOU MENTIONED THAT POSITRON HAD A CONTRACT
19 WITH VANDERBILT UNIVERSITY; CORRECT?

20 A THAT'S CORRECT.

21 Q BUT BEFORE YOUR DEPOSITION IN THIS CASE, YOU
22 HAD NEVER EVEN REVIEWED THAT CONTRACT; CORRECT?

23 A THAT'S CORRECT.

24 Q AND, SO, YOU HAVE NO BASIS WHATSOEVER TO
25 OPINE IN THIS CASE THAT SIMPLY BECAUSE POSITRON HIRED
26 VANDERBILT, THAT MEANS POSITRON CAN CLAIM CREDIT FOR
27 VANDERBILT'S TECHNICAL DEVELOPMENT; ISN'T THAT RIGHT?

28 A CAN I ELABORATE ON MY DECISION FOR THAT

1 STATEMENT?

2 Q WELL, SIR, CAN YOU ANSWER THE QUESTION WITH
3 A YES OR NO?

4 A YES.

5 Q OKAY. SO BECAUSE YOU'VE NEVER ACTUALLY
6 REVIEWED THE CONTRACT BETWEEN POSITRON AND VANDERBILT
7 UNIVERSITY, YOU HAVE NO BASIS ON WHICH TO OPINE IN
8 FRONT OF THIS JURY THAT POSITRON CAN CLAIM CREDIT FOR
9 VANDERBILT'S TECHNOLOGICAL DEVELOPMENTS SIMPLY
10 BECAUSE THEY HIRED VANDERBILT; RIGHT?

11 A THAT'S NOT TRUE. THEY HIRED VANDERBILT.
12 THEY WERE PRIVY TO THAT INFORMATION. IT'S THEIR
13 INFORMATION ALONG WITH VANDERBILT.

14 Q AND, SIR --

15 A THEY BOUGHT THAT INFORMATION FROM
16 VANDERBILT.

17 Q AND, SIR, YOU'RE SAYING THAT TO THIS JURY
18 WITHOUT EVER HAVING SEEN THE CONTRACT BETWEEN
19 POSITRON AND VANDERBILT; IS THAT CORRECT?

20 A I'M COMING FROM EXPERIENCE. YES, I DIDN'T
21 SEE THAT CONTRACT, BUT I HAVE CONDUCTED RESEARCH WITH
22 UNIVERSITIES IN THE PAST.

23 AND UNIVERSITIES ALWAYS HAVE IN THEIR
24 CONTRACTS THAT THAT INFORMATION CAN BE USED BY THE
25 UNIVERSITY FOR EDUCATIONAL PURPOSES, FOR A DOCTOR'S
26 THESIS AND OTHER THINGS WITHIN THAT UNIVERSITY.

27 SO WHILE THEY RETAIN OWNERSHIP OF THAT
28 TECHNOLOGY, THEY PROVIDE THAT TECHNOLOGY TO THE

1 PERSON THAT'S HIRED THEM AS WELL. THAT'S THE BASIS
2 I'M COMING ON.

3 WHEN YOU DO A CONTRACT LIKE THAT WITH A
4 UNIVERSITY, THERE'S A RECIPROCAL, IF YOU WOULD, THAT
5 THEY HIRED THEM, SO THEY'RE PRIVY TO THAT
6 INFORMATION. THEY BOUGHT IT.

7 Q AND, SIR, I WANT TO BE ABSOLUTELY CLEAR,
8 BECAUSE WE HEARD A LOT ABOUT YOUR EXPERIENCE.

9 BUT JUST TO BE CLEAR: YOU HAVE NEVER
10 ACTUALLY REVIEWED THE ACTUAL WRITTEN CONTRACT BETWEEN
11 POSITRON AND VANDERBILT IN THIS CASE; CORRECT?

12 A NO.

13 Q NO, YOU HAVE NOT READ IT?

14 A NO, I HAVE NOT.

15 Q NOW, YOU ALSO DETERMINED, DIDN'T YOU --
16 EXCUSE ME.

17 ONE OF THE OTHER THINGS THAT YOU OPINED ON
18 IN PREPARING YOUR REPORT IN THIS CASE WAS THAT THERE
19 WAS A DESIGN OF A SPECIFICATION FOR A PROTOTYPE
20 X.C.I.S. UNIT; CORRECT?

21 A YES.

22 Q BUT, IN FACT, IN YOUR REVIEW OF POSITRON'S
23 DOCUMENTATION, YOU DIDN'T SEE ANY ENGINEERING
24 SPECIFICATIONS FOR A PROTOTYPE THAT POSITRON
25 DEVELOPED, DID YOU?

26 A ONLY SKETCHES. AND I DON'T KNOW IF POSITRON
27 DEVELOPED THOSE OR NOT. ALL I SAW WERE SKETCHES.

28 Q NOW, WE HEARD A LITTLE BIT TODAY ABOUT THE

1 PHASE I AND PHASE II PROGRESS REPORTS.

2 DO YOU REMEMBER THAT?

3 A YES.

4 Q AND YOU ACTUALLY REVIEWED THOSE REPORTS WHEN
5 YOU WERE PREPARING YOUR EXPERT REPORT IN THIS CASE;
6 TRUE?

7 A YES.

8 Q AND YOU CITED THEM IN YOUR REPORT; RIGHT?

9 A YES.

10 Q BUT YOU ADMIT THAT THE TECHNICAL INFORMATION
11 RELATED TO PHASE CONTRAST AND TOMOSYNTHESIS THAT'S
12 INCLUDED IN THE PHASE II REPORTS WAS AUTHORED BY
13 VANDERBILT; CORRECT?

14 A YES.

15 Q AND YOU REVIEWED THE DEPOSITION TRANSCRIPTS
16 OF SOMEONE NAMED MR. HAMMONDS AT VANDERBILT
17 UNIVERSITY; CORRECT?

18 A YES.

19 Q AND MR. HAMMONDS WAS A RESEARCHER WHO WAS
20 WORKING ON THIS PROJECT IN CONJUNCTION WITH
21 DR. DONNELLY; CORRECT?

22 A YES.

23 Q AND MR. HAMMONDS PUBLISHED A DISSERTATION ON
24 THIS PROJECT IN AUGUST OF 2013; RIGHT?

25 A YES.

26 Q YOU ALSO REVIEWED THE DEPOSITION OF
27 MR. WILSON, DIDN'T YOU?

28 A YES.

1 Q MR. WILSON WAS THE CHIEF TECHNICAL OFFICER
2 AT POSITRON; CORRECT?

3 A I DON'T KNOW IF YOU'D CALL HIM THE CHIEF
4 TECHNICAL OFFICER. BUT IF THAT'S HIS TITLE, I DON'T
5 KNOW THAT.

6 Q AND BASED ON YOUR REVIEW OF BOTH OF THEIR
7 DEPOSITIONS, YOU REACHED THE CONCLUSION THAT THE
8 PORTIONS OF THE PHASE II PROGRESS REPORTS THAT
9 RELATED TO PHASE CONTRAST AND TOMOSYNTHESIS WERE
10 AUTHORED BY JEFFREY HAMMONDS BASED UPON WORK BY
11 JEFFREY HAMMONDS AND THAT JEFFREY HAMMONDS PROVIDED
12 TO POSITRON; CORRECT?

13 A THAT'S CORRECT.

14 Q NOW, WHEN MR. HAMMONDS PROVIDED THAT
15 TECHNICAL INFORMATION TO POSITRON, YOU THEN REACHED
16 THE CONCLUSION THAT POSITRON FIXED THE FORMATTING BUT
17 OTHERWISE SUBMITTED THE TEXT VERBATIM OF JEFFREY
18 HAMMONDS' WORK TO THE GOVERNMENT IN THE PHASE II
19 REPORT; CORRECT?

20 A I DON'T KNOW IF I COULD SAY VERBATIM OR NOT,
21 BUT, YES, THEY DID.

22 MS. BONN: YOUR HONOR, I'D LIKE TO SHOW TO
23 THE JURY PAGE 45, LINES 12 THROUGH 20, FROM
24 MR. BROWN'S DEPOSITION.

25 THE COURT: OKAY.

26 IS THERE GOING TO BE AN OBJECTION TO THAT?

27 MS. JOHNSON: I'M FINDING THAT, YOUR HONOR.

28 THE COURT: JUST LET ME KNOW.

1 MS. JOHNSON: NO OBJECTION, YOUR HONOR.

2 THE COURT: OKAY. YOU MAY PUBLISH THAT.

3 Q BY MS. BONN: ONCE AGAIN, SIR, I'M REFERRING
4 TO A PORTION OF THE TRANSCRIPT FROM YOUR DEPOSITION.
5 WE'RE ON PAGE 45 AT LINES 12 THROUGH 20.

6 AND I'M GOING TO ASK THAT YOU PLEASE READ
7 ALONG SILENTLY WITH ME AS I READ ALOUD TO THE JURY.

8 (AS READ):

9 "THE QUESTION IS:

10 MR. HAMMONDS AND MR. WILSON BOTH
11 TESTIFIED THAT THE PHASE II" --
12 EXCUSE ME.

13 READING FROM THE TRANSCRIPT, IT SAYS (AS
14 READ):

15 "YES. THE QUESTION IS:

16 MR. HAMMONDS AND MR. WILSON BOTH
17 TESTIFIED THAT THE PHASE II
18 REPORTS, INsofar AS SECTIONS THAT
19 RELATED TO PHASE CONTRAST AND
20 TOMOSYNTHESIS, WERE AUTHORED BY
21 JEFFREY HAMMONDS BASED UPON WORK
22 THAT JEFFREY HAMMONDS PERFORMED AND
23 THAT JEFFREY HAMMONDS PROVIDED TO
24 POSITRON. POSITRON THEN LOOKED AT
25 FORMATTING AND SUBMITTED THE TEXT
26 VERBATIM WITH JEFFREY HAMMONDS'
27 WORK?"

28 ANSWER: "YES, THEY DID."

1 I READ THAT CORRECTLY, SIR, DIDN'T I?

2 A YES.

3 Q NOW, SIR, YOU TESTIFIED ON DIRECT
4 EXAMINATION THAT THE TECHNOLOGY UNDERLYING THE
5 X.C.I.S. SYSTEM WAS FEASIBLE FOR DETECTING CORROSION
6 IN AIRCRAFT; IS THAT RIGHT?

7 A YES.

8 Q AND I KNOW THAT WE LOOKED THROUGH YOUR
9 RESUME WHEN IT WAS UP ON YOUR SCREEN EARLIER. I
10 DIDN'T SEE ANYTHING SPECIFICALLY IN YOUR BACKGROUND
11 SUGGESTING THAT YOU HAVE PERFORMED WORK IN THE
12 AEROSPACE INDUSTRY.

13 HAVE YOU DONE SO?

14 A NO.

15 Q AND, SO, YOU DON'T HAVE ANY EXPERIENCE
16 DIRECTLY WITH THE B-52, DO YOU?

17 A NO.

18 Q AND YOU DON'T HAVE ANY EXPERIENCE
19 SPECIFICALLY WITH RESPECT TO DETECTING CORROSION ON
20 AIRCRAFT; CORRECT?

21 A THAT'S CORRECT.

22 Q NOW, YOU ALSO TESTIFIED ON DIRECT
23 EXAMINATION THAT AS OF THE FALL OF 2013, THE
24 TECHNOLOGY UNDERLYING X.C.I.S. WAS NOT BEING USED IN
25 THE NONDESTRUCTIVE EVALUATION MARKET.

26 DO YOU RECALL THAT?

27 A YES.

28 Q AND, IN FACT, SIR, EVEN TO THIS DAY, THE

1 TECHNOLOGY UNDERLYING X.C.I.S. HAS STILL NOT BEEN
2 COMMERCIALIZED BY ANYONE; RIGHT?

3 A NOT THAT I'M AWARE OF.

4 Q BOEING ISN'T MAKING AND SELLING X.C.I.S.
5 UNITS, TO YOUR KNOWLEDGE?

6 A NO.

7 Q LOCKHEED MARTIN ISN'T MAKING AND SELLING
8 X.C.I.S. UNITS, TO YOUR KNOWLEDGE?

9 A NOT TO MY KNOWLEDGE.

10 Q AND THAT'S DESPITE THE FACT, AS YOU
11 TESTIFIED EARLIER, BOTH PHASE CONTRAST TECHNOLOGY AND
12 TOMOSYNTHESIS HAVE BEEN AROUND FOR DECADES; RIGHT?

13 A INDIVIDUALLY, YES.

14 Q AND DESPITE THE FACT THAT MR. HAMMONDS, THAT
15 RESEARCHER AT VANDERBILT UNIVERSITY, PUBLISHED A
16 DISSERTATION ON THE APPLICATION OF THOSE TECHNOLOGIES
17 TO ALUMINUM AND AIRCRAFT; RIGHT?

18 A YES.

19 Q NOW, EARLIER WE LOOKED AT A PICTURE THAT WAS
20 SHOWN TO THE JURY AS A C-ARM CONFIGURATION FOR A
21 POTENTIAL X.C.I.S. PROTOTYPE WHICH HAS BEEN ADMITTED
22 AS TRIAL EXHIBIT 303, AND I'M GOING TO ASK THAT IT BE
23 PUT BACK ON THE SCREEN.

24 NOW, WHEN YOU MENTIONED EARLIER THAT YOU HAD
25 SEEN SOME SKETCHES OF A POTENTIAL X.C.I.S. PROTOTYPE,
26 IS THIS WHAT YOU WERE REFERRING TO (INDICATING)?

27 A YES.

28 Q AND YOU'RE ALSO AWARE THAT THIS VERY SAME

1 PICTURE WAS ACTUALLY PRESENTED PUBLICLY AT AN
2 INDUSTRY CONFERENCE IN NOVEMBER OF 2012 BY
3 DR. HOFFMANN AT WYLE LABS; CORRECT?

4 A THAT WAS PUBLISHED IN A POSTER HE GENERATED,
5 I THINK. THAT'S CORRECT.

6 Q AND I'M GOING TO SHOW THE JURY WHAT'S BEEN
7 MARKED FOR IDENTIFICATION AS TRIAL EXHIBIT 359.

8 MS. BONN: I'VE CONFERRED WITH COUNSEL, AND
9 THERE'S NO OBJECTION.

10 THE COURT: OKAY.

11 MS. BONN: MAY IT BE ADMITTED?

12 THE COURT: I'M SORRY. GIVE ME A MINUTE.

13 WHAT NUMBER ARE YOU TALKING ABOUT?

14 MS. BONN: TRIAL EXHIBIT 359.

15 THE COURT: EXHIBIT 359 IS ADMITTED.

16

17 (JOINT EXHIBIT NO. 359 WAS RECEIVED IN EVIDENCE.)

18

19 MS. BONN: AND, MR. SPALDING, IF YOU COULD
20 PLEASE LOOK AT THE POSTER. IF YOU COULD PULL THAT UP
21 FOR ME, PLEASE. THANK YOU.

22 Q BY MS. BONN: SIR, THIS IS THE POSTER YOU
23 JUST MENTIONED THAT DR. HOFFMANN OF WYLE LABORATORIES
24 PUBLISHED AT AN INDUSTRY CONFERENCE IN NOVEMBER OF
25 2012; CORRECT?

26 A THAT'S CORRECT.

27 Q AND IT'S ENTITLED, "X-RAY CORROSION
28 INSPECTION SYSTEM (X.C.I.S.)"; RIGHT?

1 A YES.

2 Q IT HAS LOGOS AT THE TOP FOR WYLE AND
3 POSITRON AND VANDERBILT UNIVERSITY; RIGHT?

4 A YES.

5 MS. BONN: AND THEN I WANT TO ASK
6 MR. SPALDING TO ZOOM IN ON THIS BOTTOMMOST RIGHT-HAND
7 CORNER WHERE IT SAYS, "TRANSITIONING CONCEPT."

8 Q BY MS. BONN: DO YOU SEE THAT?

9 A YES.

10 Q AND, SIR, WE CAN SEE THAT THE VERY SAME
11 C-ARM PROTOTYPE SKETCH IS DEPICTED IN THIS POSTER;
12 CORRECT?

13 A YES.

14 MS. BONN: AND CAN WE PULL THAT UP, SIDE BY
15 SIDE, WITH THE ONE IN EXHIBIT 303?

16 Q BY MS. BONN: AND YOU CAN CONFIRM, LOOKING
17 AT THE TWO SKETCHES OF THE C-ARM SIDE BY SIDE, THAT
18 THEY APPEAR TO BE THE SAME?

19 A YES.

20 Q SO YOU CAN CONFIRM THAT BY NOVEMBER OF 2012,
21 THIS C-ARM SKETCH WAS PUBLISHED WITHIN THE INDUSTRY;
22 CORRECT?

23 A YES.

24 Q AND WHEN DR. HOFFMANN AT WYLE PUBLISHED THIS
25 SKETCH AT AN INDUSTRY CONFERENCE, HE DIDN'T DO IT
26 BEHIND POSITRON'S BACK, TO YOUR KNOWLEDGE; RIGHT?

27 A THAT'S CORRECT.

28 Q HE ASKED FOR POSITRON'S PERMISSION TO DO IT;

1 RIGHT?

2 A YES.

3 Q AND POSITRON GRANTED THAT PERMISSION; RIGHT?

4 A YES.

5 MS. BONN: YOUR HONOR, I'D LIKE TO INTRODUCE
6 TRIAL EXHIBIT 358. I CONFERRED WITH COUNSEL, AND
7 THERE'S NO OBJECTION.

8 THE COURT: OKAY. 358 IS ADMITTED.

9

10 (JOINT EXHIBIT NO. 358 WAS RECEIVED IN EVIDENCE.)

11

12 MS. BONN: IF WE COULD ZOOM TO THE TOPMOST
13 E-MAIL HEADER.

14 Q BY MS. BONN: SIR, THIS IS AN E-MAIL FROM
15 MR. WILSON TO DR. HOFFMANN, AMONG OTHERS, IN NOVEMBER
16 OF 2012, SAY, "LOOKS GREAT. THANKS FOR PUTTING THIS
17 TOGETHER"; RIGHT?

18 A YES.

19 Q NOW, ON DIRECT EXAMINATION, YOU LOOKED AT A
20 DOCUMENT THAT'S BEEN ADMITTED IN EVIDENCE AS
21 EXHIBIT 737. A REPORT TO WYLE'S I.R.A.D. BOARD.

22 DO YOU RECALL TESTIFYING ABOUT THIS
23 DOCUMENT?

24 A YES.

25 MS. BONN: AND I'M GOING TO ASK MR. SPALDING
26 TO PUT UP ON THE SCREEN PAGE 14 OF THIS DOCUMENT.

27 IF WE COULD ZOOM IN ON SECTION 3.2.

28 Q BY MS. BONN: YOU CAN SEE THAT THIS SECTION

1 SAYS "X.C.I.S. MANIPULATOR SYSTEM DESIGN"; CORRECT?

2 A YES.

3 Q AND IN THE FIRST SENTENCE UNDER THAT
4 SECTION, IT SAYS, "INITIALLY WYLE PLANNED TO USE A
5 SO-CALLED C-ARM SYSTEM AS A MANIPULATOR FOR THIS
6 PROJECT."

7 DO YOU SEE THAT?

8 A YES.

9 Q BUT, THEN, IF YOU LOOK A LITTLE BIT FURTHER
10 DOWN THE PARAGRAPH, IT SAYS (AS READ):

11 "HOWEVER, ALL CONTACTED C-ARM
12 PROVIDERS WERE HESITANT TO PROVIDE
13 A C-ARM WITHOUT THE ALREADY
14 BUILT-IN TUBE AND DETECTOR UNITS,
15 WHICH, IN ALL CASES, WERE NOT
16 SUFFICIENT FOR THE PURPOSES OF THIS
17 PROJECT."

18 DO YOU SEE THAT?

19 A YES.

20 Q AND THEN THE DOCUMENT STATES (AS READ):

21 "CUSTOMIZING THE PRODUCT WOULD
22 HAVE BEEN DONE RELUCTANTLY AND ONLY
23 FOR A SUBSTANTIAL PRICE."

24 DO YOU SEE THAT?

25 A YES.

26 Q FINALLY, IT SAYS (AS READ):

27 "IN ADDITION, THE C-ARM DESIGN
28 FOR THE MEDICAL FIELD POTENTIALLY

1 LACKS THE RUGGEDNESS REQUIRED FOR
2 THE INTENDED DEPOT ENVIRONMENT."

3 DO YOU SEE THAT?

4 A YES.

5 Q SO, IN FACT, WYLE WAS TELLING IT'S I.R.A.D.
6 BOARD THAT, WHILE IT HAD INITIALLY PLANNED TO USE A
7 C-ARM SYSTEM, ACTUALLY, THAT SYSTEM WAS NOT FEASIBLE;
8 CORRECT?

9 A THEY SAID THAT, YES.

10 Q AND, IN FACT, WYLE THEN BEGAN DEVELOPING A
11 DIFFERENT DESIGN; CORRECT?

12 A I THINK THEY LOOKED AT IT. I DON'T THINK I
13 EVER SAW A DESIGN THAT THEY MADE.

14 I SAW THAT THEY WERE GOING TO TRY TO MAKE IT
15 MORE ROBUST SO THEY COULD USE IT IN AN AIRCRAFT
16 APPLICATION, BUT I THINK THIS WAS JUST A CONCEPT
17 DRAWING FROM THE BEGINNING.

18 OF COURSE IT WOULD HAVE TO BE DESIGNED AND
19 DEVELOPED FROM AN ENGINEERING STANDPOINT.

20 Q NOW, LOOKING AT THE NEXT PARAGRAPH IN
21 SECTION 3.2, IF YOU LOOK PARTWAY DOWN THAT PARAGRAPH
22 -- AND I'LL HAVE MR. SPALDING HIGHLIGHT IT -- WYLE
23 LABS IS TALKING ABOUT THE NEW DESIGN THEY'RE
24 CONSIDERING.

25 AND THEY WRITE (AS READ):

26 "THE ARM IS RECTANGULAR SHAPE,
27 OBEYING THE 6-FOOT DISTANCE
28 REQUIREMENT. THE OPENING ALLOWS

1 SUFFICIENT SPACE FOR THE TARGET
2 AIRCRAFT STRUCTURE."

3 DO YOU SEE THAT?

4 A YES.

5 Q AND, SO, BY THIS POINT IN TIME, RATHER THAN
6 TALKING ABOUT USING A C-ARM DESIGN, WYLE LABS WAS
7 TALKING ABOUT USING A DESIGN WITH A
8 RECTANGULAR-SHAPED ARM; CORRECT?

9 A YES.

10 Q AND IF YOU LOOK A LITTLE BIT FURTHER DOWN
11 THAT PARAGRAPH, THERE'S A SENTENCE THAT SAYS (AS
12 READ) :

13 "A LIFT WILL RAISE THE SYSTEM
14 SUCH THAT THE TUBE WILL BE ON ONE
15 SIDE OF THE TARGET STRUCTURE AND
16 THE DETECTOR ON THE OTHER SIDE."

17 DO YOU SEE THAT?

18 A YES.

19 Q AND, SO, BY THIS POINT IN TIME, WYLE WAS
20 ALSO CONSIDERING A DESIGN THAT WOULD INVOLVE A LIFT;
21 CORRECT?

22 A YES.

23 MS. BONN: NOW, IF YOU TURN TO THE NEXT
24 PAGE, MR. SPALDING, WE CAN SEE THAT THERE'S AN IMAGE
25 UP TOP THAT I UNDERSTAND WAS GOING TO BE PART OF THE
26 NEW WYLE LABS DESIGN.

27 AND IF WE COULD JUST SHOW THAT SIDE BY SIDE
28 WITH THE C-ARM.

1 Q BY MS. BONN: SIR, YOU CAN CONFIRM THAT
2 THESE TWO PHOTOS ON THE SCREEN DON'T LOOK MUCH ALIKE;
3 RIGHT?

4 A THAT'S CORRECT.

5 Q THANK YOU.

6 MS. BONN: THANK YOU, MR. SPALDING.

7 Q BY MS. BONN: NOW, ON DIRECT EXAMINATION,
8 YOU TALKED ABOUT THE HOURLY BILLING RATE AT WHICH YOU
9 WERE BEING PAID ON THIS CASE; CORRECT?

10 A THAT'S CORRECT.

11 Q AND YOU MENTIONED THAT YOU ARE PERSONALLY
12 RECEIVING 150 HOURS (SIC) FOR YOUR PREPARATION TIME,
13 AND THEN \$200 PER HOUR FOR YOUR DEPOSITION AND TRIAL
14 TESTIMONY; CORRECT?

15 A THAT'S CORRECT.

16 Q BUT YOU ACTUALLY WORK FOR A FIRM THAT HIRES
17 YOU OUT; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q AND THE FIRM IS COLLECTING A HIGHER RATE
20 THAN THAT; RIGHT?

21 A YES.

22 Q THE FIRM IS CHARGING \$275 PER HOUR FOR YOUR
23 PREPARATION AND \$350 AN HOUR FOR YOUR TIME
24 TESTIFYING; CORRECT?

25 A THAT'S CORRECT.

26 Q NOW, AS OF YOUR DEPOSITION IN THIS CASE,
27 WHICH WAS A WHILE BACK, I UNDERSTAND YOUR FIRM HAD
28 BILLED AROUND \$80,000 FOR YOUR WORK ON THIS PROJECT;

1 IS THAT CORRECT?

2 A PROBABLY PRETTY CLOSE, YES.

3 Q HOW MUCH HAS BEEN BILLED TODAY?

4 A ALL I CAN TELL YOU RIGHT NOW IS THE HOURS.
5 I HAVEN'T KEPT UP. I HAVE ALL THE INVOICES, AND UP
6 THROUGH MY LAST INVOICE, I CHARGED 328 HOURS.

7 Q THANK YOU, SIR.

8 NOW, WE TALKED A LITTLE BIT EARLIER ABOUT
9 THE SPECIFIC QUESTIONS THAT YOU WERE ASKED TO ADDRESS
10 IN THIS CASE BY POSITRON'S COUNSEL.

11 DO YOU REMEMBER THAT?

12 A YES.

13 Q AND THOSE WERE THE ONLY QUESTIONS THAT YOU
14 ACTUALLY DID ADDRESS IN YOUR WORK ON THIS CASE;
15 CORRECT?

16 A THAT'S CORRECT.

17 Q YOU WEREN'T ASKED TO OPINE ON WHETHER
18 POSITRON ACTUALLY IS RESPONSIBLE FOR DEVELOPING THE
19 X-RAY SYSTEM, WERE YOU?

20 A NO.

21 Q YOU WEREN'T ASKED TO OPINE ON WHETHER THE
22 TECHNOLOGY UNDERLYING THE X-RAY SYSTEM WAS POSITRON'S
23 TRADE SECRET; CORRECT?

24 A THAT'S CORRECT.

25 Q YOU WEREN'T ASKED TO OPINE ON WHETHER THE
26 TECHNOLOGY UNDERLYING THE X-RAY SYSTEM CONSTITUTED
27 POSITRON'S PROPRIETARY INFORMATION; CORRECT?

28 A CAN YOU RESTATE THAT AGAIN FOR ME?

1 Q YOU WERE NOT ASKED TO OPINE ON WHETHER THE
2 TECHNOLOGY IN THE X.C.I.S. SYSTEM CONSTITUTED
3 POSITRON'S PROPRIETARY INFORMATION UNDER ITS
4 NONDISCLOSURE AGREEMENT; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q AND, IN FACT, IN THIS CASE, YOU'VE NEVER
7 EVEN REVIEWED A DOCUMENT CALLED THE TRADE SECRET
8 DISCLOSURE WHERE POSITRON ACTUALLY STATES WHAT ITS
9 TRADE SECRET IS; CORRECT?

10 A THAT'S CORRECT.

11 Q SO SITTING HERE TODAY AND TESTIFYING IN
12 FRONT OF THIS JURY, YOU HAVE NO IDEA WHAT POSITRON IS
13 CLAIMING ITS TRADE SECRET TO BE; CORRECT?

14 A THAT'S CORRECT.

15 Q NOW, SIR, YOU TALKED A LITTLE BIT ABOUT YOUR
16 OPINIONS ON THE FEASIBILITY OF THIS TECHNOLOGY, BUT
17 YOU ACTUALLY NEVER PERFORMED ANY TESTS YOURSELF IN
18 PREPARING YOUR OPINIONS IN THIS CASE; CORRECT?

19 A THAT'S CORRECT. THAT WASN'T PART OF MY
20 CHARGE.

21 Q YOU DIDN'T -- THAT WASN'T PART OF YOUR
22 CHARGE BY POSITRON'S COUNSEL?

23 A THAT'S CORRECT.

24 Q SO YOU DIDN'T RENT ANY X-RAY EQUIPMENT?

25 A NO.

26 Q YOU DIDN'T TRY TO IDENTIFY ANY COMPONENTS OF
27 AIRCRAFT THAT YOU COULD ACTUALLY TEST THIS X-RAY
28 TECHNOLOGY ON; CORRECT?

1 A NO.

2 MS. BONN: THANK YOU, YOUR HONOR. I HAVE NO
3 FURTHER QUESTIONS.

4 THE COURT: REDIRECT?

5 MS. JOHNSON: NO.

6 THE COURT: OKAY. MAY THIS WITNESS BE
7 EXCUSED TO GO HOME?

8 MR. BHATIA: YES, YOUR HONOR.

9 THE COURT: OKAY. YOU ARE FREE TO GO HOME.
10 THANK YOU, SIR.

11 THE WITNESS: THANK YOU.

12 THE COURT: OKAY. SO YOU MAY STEP DOWN.
13 THANK YOU.

14 MS. JOHNSON: THANK YOU VERY MUCH,
15 MR. BROWN.

16 THE COURT: AND POSITRON IS GOING TO CALL
17 ITS NEXT WITNESS OR RECALL MR. LANEY.

18 MS. CROWTHER: CORRECT. WE WILL RECALL
19 MR. LANEY.

20 THE COURT: OKAY. SO MR. LANEY IS GOING TO
21 COME UP HERE. AND WE'RE GOING TO GIVE BACK THESE
22 THINGS TO POSITRON.

23 AND, MR. LANEY, YOU ARE STILL UNDER OATH.
24 YOU MAY PROCEED.

25 ///
26 ///
27 ///
28

 STEVEN LANEY,