

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Robert W. Hasel,)	File No. 01cv2008
)	(DSD/FLN)
Plaintiff,)	
)	
vs.)	Minneapolis, Minnesota
)	August 20, 2003
Pulpdent Corporation, a)	2:00 P.M.
Massachusetts corp.,)	Afternoon Session
)	
Defendant.)	
)	

BEFORE THE HONORABLE DAVID S. DOTY
UNITED STATES DISTRICT COURT JUDGE and a JURY
(EXCERPT OF TRIAL)

APPEARANCES

For the Plaintiff: RONALD J. BROWN, ESQ.
CHRISTOPHER A. YOUNG, ESQ.
THERESA K. HANKES, ESQ.

For the Defendant: WILLIAM H. LEE, ESQ.
DAVID A. DAVENPORT, ESQ.
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Proceedings recorded by mechanical stenography;
transcript produced by computer.

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1 (In open court with the Jury present.)

2 THE COURT: Do you want to take your seats,
3 please, and we will continue.

4 MR. BROWN: Thank you, Your Honor.

5 (THOMAS BRYAN)

6 CROSS-EXAMINATION (Resumed)

7 BY MR. BROWN:

8 Q. Are you ready to proceed, Mr. Bryan?

9 A. I'm ready for you anytime.

10 Q. Okay. Mr. Bryan, am I correct that you had worked with
11 E & D Dental on some products other than what we have been
12 talking about this morning?

13 A. Yes. Correct.

14 Q. And among those products was an Epoxy material. Do you
15 recall that?

16 A. Correct.

17 Q. Do you recall that E & D attempted to commercialize
18 that product?

19 A. Yes.

20 Q. Do you recall that E & D was dissatisfied with the
21 results of that product?

22 A. It just didn't go on the market properly. That was the
23 error.

24 Q. In other words, it's fair to say that they weren't
25 successful in commercializing the product?

1 A. Correct.

2 Q. And would it be fair to say that they felt you were at
3 least partly responsible for the failure of that product?

4 A. No, not at all.

5 Q. Isn't that one of the reasons that E & D chose to
6 cancel its contract with you?

7 A. No, not at all because after that --

8 Q. Mr. Bryan --

9 A. Okay. Please ask.

10 Q. Now, let's talk about your role, if any, in dental --
11 developing dental techniques. Am I correct that you and
12 Dr. Hasel began to work together in early 1992?

13 A. Yes.

14 Q. And you were not a dentist, correct?

15 A. Correct.

16 Q. You have no experience in applying filling materials to
17 the teeth of patients, correct?

18 A. Correct.

19 Q. You left it to dentists to develop the methods of
20 application, correct?

21 A. Correct.

22 Q. You had nothing to do with the method that Dr. Hasel
23 employed to apply to and manipulate the experimental
24 formulations you gave to him in his patients' teeth,
25 correct?

1 A. Correct.

2 Q. You were not involved in developing the techniques that
3 he used for applying composite restoration materials to
4 teeth, correct?

5 A. I was not involved.

6 Q. Now, would it be fair to characterize the working
7 relationship that you had with Dr. Hasel as follows: He
8 would tell you what he wanted from a clinical perspective,
9 and then you would go to the lab and try to formulate a
10 material that would satisfy his clinical requirements?

11 A. Not correct.

12 Q. Am I correct that you tried to give to Dr. Hasel
13 materials that you thought would satisfy his clinical
14 needs?

15 A. Yes.

16 Q. And am I correct that he told you what he thought his
17 clinical needs were?

18 A. No, he never did.

19 Q. Well, in fact, didn't he tell you on many occasions
20 that the material was too thick or the material was too
21 runny or the material couldn't be extruded from the tip of
22 the syringe?

23 A. No.

24 Q. Isn't that true?

25 A. No. I evaluated that myself.

1 Q. So it's your testimony that Dr. Hasel did not give you
2 any feedback on how your materials were handling in the
3 clinical situation?

4 A. Certain feedbacks, yes, but not the ones that you
5 asked.

6 Q. So he didn't tell you, for example, whether the
7 material was too runny?

8 A. No.

9 MR. BROWN: May I approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 BY MR. BROWN:

13 Q. Mr. Bryan, I'm handing you what I believe is your
14 deposition transcript.

15 A. I'm familiar with this transcript.

16 Q. Do you recall that your deposition was taken in the
17 Danville litigation?

18 A. Yes, just a deposition. There was no litigation.

19 Q. And do you recall that that deposition was in September
20 of last year?

21 A. I think so, yes. September 30.

22 Q. And would you please turn to page 106?

23 A. 106?

24 Q. Yes.

25 MR. LEE: Your Honor, can we inquire if we're

1 going to be able to see this on the Elmo or paper?

2 THE COURT: I'm sorry. I didn't understand. I
3 think I understood the question, and I don't understand it.

4 MR. LEE: We don't have a copy of the deposition
5 transcript we can look at. I was wondering if they were
6 going to put it up on the Elmo.

7 THE COURT: Certainly you can't put it on the
8 Elmo and show it to the jury. We're not going to do that.

9 MR. BROWN: I was not anticipating showing this
10 as a substantive exhibit.

11 THE COURT: There is an extra copy coming to you,
12 I think.

13 MR. LEE: Thank you, Your Honor.

14 THE COURT: Hang on just a second.

15 BY MR. BROWN:

16 Q. Now, you took an oath to tell the truth during that
17 deposition, Mr. Bryan?

18 A. Only the truth.

19 Q. Only the truth, and at page 106 starting at line 19, I
20 asked you this question, and you gave me this answer: Did
21 Dr. Hasel ever tell you that a certain composition ran too
22 much from the -- from the hollow of a tooth?

23 Answer: Not from the hollow of the tooth, no.
24 I -- he just said that mostly it is, it is too, too liquidy
25 or too, too thick, and we were just adjusting the

1 percentages of fillers.

2 Did I read that correctly?

3 A. Yes.

4 Q. That was your testimony?

5 A. Yes.

6 Q. And you recognized that in order to commercialize a
7 product, especially one that was intended for placement in
8 patients, you had to have both laboratory work and then
9 clinical experience, correct?

10 A. I don't understand what you consider clinical
11 experience.

12 Q. I mean, you had to have a dentist use the material in
13 order to determine whether it could be applied in the
14 manner desired, how it handled in the dentist's hands and
15 whether it was acceptable as a filling material, correct?

16 A. Not necessarily.

17 Q. Did you -- didn't you recognize that clinical
18 experimentation was needed in connection with this product?

19 A. Oh, yes. It was needed, but it was clinical study, and
20 research is done completely different than in the hands of
21 a his idea telling me, is it too runny or too fast.
22 Clinical research involves much more.

23 Q. But am I correct, Mr. Bryan, that Dr. Hasel was giving
24 you feedback as to whether it was too thick or too runny,
25 how it handled in his hands, correct?

1 A. Yes. To a certain degree, but so did others, though.

2 MR. BROWN: Objection. Move to strike as
3 nonresponsive.

4 THE COURT: And the motion will be granted, and
5 that last response will be struck.

6 BY MR. BROWN:

7 Q. Now, you mentioned that E & D became involved in the
8 effort to bring this flowable composite to the market, is
9 that right?

10 A. Correct.

11 Q. And in connection with your working with E & D, am I
12 correct that you had a confidentiality agreement with E &
13 D?

14 A. Correct.

15 Q. And under that confidentiality agreement, both you and
16 E & D were obligated to keep what was being done in
17 connection with this project confidential, correct?

18 A. What has been done? What should be done.

19 Q. What was being done. What was being done.

20 A. Yes.

21 Q. And you recognized that obligation of confidentiality?

22 A. Yes.

23 Q. And you thought you should honor it, correct?

24 A. Yeah. We are very confidential in these developments.

25 Q. All right. And then in connection with the work with

1 Sci-Pharm, was the same true that there was a mutual
2 obligation of confidentiality?

3 A. No, there was not. However, I sent my formulation and
4 my information to Sci-Pharm on the confidential note.

5 Q. All right. You understood that Sci-Pharm had a duty of
6 confidentiality?

7 A. Correct.

8 Q. Now, you've alluded in your testimony to some other
9 dentists. Do you have any records that show that you
10 transmitted samples of the experimental materials you were
11 working on to any dentist other than Dr. Hasel?

12 A. I did not have any records to Dr. Hasel, nor to anybody
13 else. It was strictly on a personal basis, no
14 confidentiality at all. Just giving them a sample to take.

15 MR. BROWN: Move to strike as nonresponsive, Your
16 Honor.

17 THE COURT: And the latter part of the answer
18 will be struck.

19 BY MR. BROWN:

20 Q. Am I correct, Mr. Bryan, that you have no
21 correspondence with any dentists other than Dr. Hasel?

22 A. No, I have some. I have actually an agreement contract
23 with Dr. Belvedere, Paul Belvedere. I have a contract
24 signed that we never practiced actually.

25 Q. A contract that you never practiced?

1 A. That if this business develops and generates all these
2 things that he's going to be compensated.

3 Q. All right. Am I correct that that contract was not
4 executed prior to October of 1993?

5 A. That's correct.

6 Q. And, in fact, that contract wasn't executed until after
7 the relationship between you and E & D and Dr. Hasel had
8 dissolved, correct?

9 A. That's correct. There was no more contract or contact
10 with them anymore.

11 Q. All right. And other than that contract, which is
12 dated after October of 1993, you have no documents
13 reflecting communications with any dentists other than
14 Dr. Hasel, correct?

15 A. Not even with Dr. Hasel.

16 Q. Well, we've talked this morning about some
17 correspondence that you had with Dr. Hasel. Remember?

18 A. After what, 19 --

19 Q. Before October of 1993.

20 A. Before? Yes. Before, but not after.

21 Q. Am I correct that in your files you have no patient
22 record summaries other than those of Dr. Hasel?

23 A. That's correct.

24 Q. And am I correct that in your laboratory notebook,
25 Defendant's Exhibit 45, there are a number of references to

1 a Bob?

2 A. To --

3 Q. To Bob, B-O-B, Bob?

4 A. To Bob? Maybe, yes.

5 Q. And the Bob you were referring to was Bob Hasel?

6 A. Correct. Correct.

7 Q. But there are no references to any of these other
8 dentists that you say were the recipient of your
9 formulations, correct?

10 A. That's correct.

11 Q. And there is no record, no document which establishes
12 that you provided your materials, your experimental
13 materials, to any dentist other than Dr. Hasel, correct?

14 A. There is not any record that I supplied to Dr. Hasel,
15 either.

16 Q. Well, except your laboratory notebook indicates that
17 you're giving materials to Dr. Hasel, doesn't it?

18 A. Yeah, but I indicated in my notebook to others, too.
19 For example, I know specifically I gave that sample --

20 MR. BROWN: Move to strike as nonresponsive.

21 THE COURT: And that motion will be granted, and
22 that will be struck.

23 BY MR. BROWN:

24 Q. All right. Let's look at your laboratory notebook,
25 Mr. Bryan. That's Defendant's Exhibit 45. Do you have

1 that? Do you have that, Mr. Bryan?

2 A. Yes, I do.

3 Q. All right. Could we turn to AP 100832? It's the V-11
4 bond dated July 24, 1992?

5 A. July -- July 24?

6 Q. July 24.

7 A. V-11 bond?

8 Q. Right.

9 A. Correct.

10 Q. And do you see -- I'm getting dizzy looking at the
11 screen. Can we focus on the paragraph that starts with,
12 "Filled in red syringe"?

13 A. Correct.

14 Q. All right. So as of July 24, 1992, am I correct that
15 you filled a red syringe and gave that to Bob?

16 A. I don't know if I gave that red syringe to Bob. There
17 is no indication, but I know -- yeah, syringe for Bob, yes.

18 Q. It says, Also filled in duo cure syringe for Bob?

19 A. Correct.

20 Q. And the Bob you were referring to was Bob Hasel,
21 correct?

22 A. Right. That is correct.

23 Q. No mention on this page of filling a syringe for any
24 other dentist, is there?

25 A. No.

1 Q. All right. Let's go to the next page, from August 31
2 of 1992, and that page is related to a V-12 composition.

3 Do you see that?

4 A. Yes.

5 Q. And if we look at the paragraph that begins,
6 Ultrasonically dispersed. Do you see that paragraph?

7 A. Yes, I see that.

8 Q. And in that paragraph you say, Given to Bob in syringe,
9 correct?

10 A. Correct.

11 Q. Again, Bob Hasel?

12 A. Yes. Yes. I gave him many syringes.

13 Q. No reference to any other dentist?

14 A. No reference here but --

15 Q. All right. The next page, AP 100834, that relates to a
16 V-13 composition, is that correct?

17 A. Correct.

18 Q. And on that page, it indicates that you gave a syringe
19 of V-13 to Bob?

20 A. Correct.

21 Q. But no indication of giving it to any other dentist,
22 correct?

23 A. I did not indicate that.

24 Q. Let's turn to page AP 100846.

25 A. I'm sorry.

1 Q. I'm sorry. It's AP 100846. It might be easier if you
2 just --

3 A. 846.

4 Q. -- if you just go to the date, it's November 9th, 1992.

5 A. 846. All right. 846 is right here. V-44, November
6 the 9th.

7 Q. V-24, right? And if we look at the bottom paragraph on
8 that page, can you read that for us, Mr. Bryan?

9 A. Clear -- clear liquid separation. Very large
10 inhibition layer scans like it will not cure on the layer.
11 Bob noticed no cure and plugging the tip.

12 Q. Comes in chunks, right?

13 A. Chunks. No exceptional --

14 Q. Not acceptable at all, is that what it says?

15 A. Yes. I asked myself why. Is it HEMA is a conclusion
16 or --

17 Q. All right.

18 A. -- or too much resin. This is my own comments that I
19 was speculating. No, but it epoxytited and is not suitable
20 and it gels. That's correct. Now.

21 Q. Now, here is my question: The Bob referred to on this
22 page is Bob Hasel, correct?

23 A. Correct.

24 Q. And you don't refer to anyone else that is referred to
25 on this page, correct?

1 A. Correct.

2 Q. This refers to the fact that Dr. Hasel was giving you
3 clinical feedback as to how the material was performing in
4 his clinic?

5 A. Not at all.

6 Q. Doesn't it say, Mr. Bryan, that Bob noticed no cure and
7 plugging the tip, comes in chunks. That was his
8 observation, correct?

9 A. He confirmed that which I stated before. It was a
10 complete flop.

11 Q. It was a complete flop?

12 A. And I concluded on my own that it epoxytited. This GMA
13 was not suitable at all because it gelled.

14 Q. Okay. So at this point we're in November of 1992, and
15 the current formulation, V-24, was, in your words, a flop?

16 A. Yes, but this you have to understand, these
17 compositions --

18 Q. Mr. Bryan, please.

19 A. -- is not a flowable composite. This is a bond with
20 HEMA.

21 Q. Am I correct that this did not cure and plugged the
22 tip?

23 A. Correct.

24 Q. And it's your contention that that is not a filling
25 material?

1 A. It's not a bonded material. It's a bonding material,
2 this composition. It's not a filling material.

3 Q. Now, let's look at the next page, AP 100847, and up at
4 the top of the page it says V-25 bond, right?

5 A. Correct.

6 Q. And then if we go back two pages to AP 100845, we see
7 up at the top of the page V-23 bond, correct?

8 A. Yes.

9 Q. But when we go to page AP 100846 for V-24, there is no
10 indication that it's a bond, correct?

11 A. Well --

12 Q. Am I correct, Mr. Bryan?

13 A. No, you are not. There is no indication, but there is
14 HEMA here. That is always --

15 Q. Please, Mr. Bryan. Is there any indication in the
16 title of this page that V-24 is a bond?

17 A. No, there is no indication, but it's a bond.

18 Q. Would it be fair to say, Mr. Bryan, that you knew very
19 early on that Dr. Hasel was interested in patenting his
20 ideas?

21 A. No. He mentioned that not his ideas, but the work we
22 are doing, but I personally never considered it serious.

23 Q. Would you please look at Defendant's Exhibit 52, the
24 letter from Dr. Hasel to you, dated July 14th, 1992. Do
25 you have that letter in front of you, Mr. Bryan?

1 A. It's right on the screen here, yes. We had that before
2 already.

3 Q. And am I correct that in that letter, Dr. Hasel says, I
4 talked to Chris Minick ala 3M. Chris has been very
5 encouraging to me to pursue the sealant project. He thinks
6 a patent is important. Do you see that statement?

7 A. Yes, I see that.

8 Q. And you understood that the sealant project was a
9 precursor to the development of filling material that could
10 be administered through a needle tip syringe, correct?

11 A. Correct.

12 Q. Now, am I correct that there are no documents from you
13 to Dr. Hasel suggesting that a flowable composite filling
14 material in a needle tip syringe was not his idea?

15 A. Was not his idea, not my idea --

16 Q. Mr. Bryan, the question is, Are there any documents
17 from you to Dr. Hasel --

18 A. No, there are no documents.

19 Q. And yet, you knew that Dr. Hasel was considering
20 patenting some of the ideas that he was working with,
21 correct?

22 A. I didn't know that, and I didn't take it for a
23 specific --

24 Q. But, in fact, this letter indicates that he had an
25 interest in pursuing that possibility, correct?

1 A. Mr. Chris Minick --

2 Q. Mr. Bryan, please. Can you answer that yes or no?

3 A. No, it doesn't indicate.

4 THE COURT: Make sure you talk into the
5 microphone, also.

6 THE WITNESS: Oh, sorry. Sorry.

7 THE COURT: Members of the Jury, are you able to
8 hear without the mike?

9 THE WITNESS: I'm loud enough.

10 THE COURT: We both are.

11 THE WITNESS: Good.

12 BY MR. BROWN:

13 Q. Mr. Bryan, is it your recollection that you worked on
14 the project with Dr. Hasel well into 1993?

15 A. Yes, the middle, about the middle until he indicated
16 he's not interested anymore working with me.

17 Q. Now, let's look at Plaintiff's Exhibit 289.

18 THE COURT: Has this been received?

19 MR. BROWN: I do not believe so, Your Honor.

20 BY MR. BROWN:

21 Q. Do you recognize this document, Mr. Bryan?

22 A. It's blank. Oh, it's coming now.

23 Q. All right. Can we enlarge it a little? Just zoom on
24 the text so it's easier for Mr. Bryan to see.

25 A. Yes. This is -- this is from Sci-Pharm.

1 THE COURT: Don't read it out loud, please.

2 THE WITNESS: Oh.

3 BY MR. BROWN:

4 Q. Am I correct, Mr. Bryan, that this is a letter that was
5 sent to you on or around June 25th, 1993, from Sci-Pharm?

6 A. Correct.

7 MR. BROWN: At this time we offer Plaintiff's
8 Exhibit 289 in evidence.

9 MR. LEE: No objection, Your Honor.

10 THE COURT: 289 will be received.

11 (Plaintiff's Exhibit 289 received in evidence.)

12 BY MR. BROWN:

13 Q. And would it be fair to say that Sci-Pharm thought that
14 your efforts were not advanced far enough for it to become
15 involved?

16 A. Correct.

17 Q. And it was not satisfied that there was a sufficient
18 clinical track record in order to be comfortable taking on
19 this project, correct?

20 A. Correct, there is no clinical.

21 THE COURT: I'm trying to get real time working.
22 If you see me acting strange, make sure you remind me,
23 because the real time is not coming up, either. That's not
24 my fault, I don't think.

25 BY MR. BROWN:

1 Q. Would you please turn to Plaintiff's Exhibit 290. Am I
2 correct, Mr. Bryan, that this is a letter from Dr. Orlowski
3 at Sci-Pharm to Ed Spehar?

4 A. Yes.

5 Q. And you're carbon copied on this letter. Do you see
6 that at the bottom? Do you see that, Mr. Bryan?

7 A. Yes, I see that.

8 Q. And this letter was received by you on or about June
9 25th, 1993?

10 A. That's right.

11 MR. BROWN: At this time we offer Plaintiff's
12 Exhibit 290 in evidence.

13 MR. LEE: No objection, Your Honor.

14 THE COURT: 290 will be received.

15 (Plaintiff's Exhibit 290 received in evidence.)

16 BY MR. BROWN:

17 Q. Now, in this letter, Mr. Bryan, am I correct that
18 Sci-Pharm refers to the formulations that were provided to
19 them by you as the experimental formulations?

20 A. Correct.

21 Q. Let's turn next to Plaintiff's Exhibit 291. Do you
22 have that in front of you, Mr. Bryan?

23 A. Now I've got it.

24 Q. Am I correct that this is a letter from Ed Spehar of
25 E & D Dental to you dated July 12th, 1993?

1 A. Correct.

2 MR. BROWN: At this time we offer Plaintiff's
3 Exhibit 291 in evidence.

4 MR. LEE: Well, Your Honor, I have no objection
5 to the letter per se, but at the moment he hasn't indicated
6 what portion he is going to use and why he's going to use
7 it. Given what happened with the last letter, I would
8 withhold my acquiescence at the moment.

9 THE COURT: As to 291?

10 MR. LEE: As to the current exhibit, 291.

11 THE COURT: 291? Are you offering 291?

12 MR. BROWN: Yes.

13 THE COURT: I'm going to overrule the objection.

14 MR. LEE: Thank you.

15 THE COURT: And 291 will be received.

16 (Plaintiff's Exhibit 291 received in evidence.)

17 BY MR. BROWN:

18 Q. All right. Can you read to us the first paragraph of
19 Exhibit 291, Mr. Bryan? Let's enlarge it so maybe all of
20 us can read it. Let me try to read it, and you can tell me
21 if I --

22 A. Please do that.

23 Q. All right. We recently ran short of the composite
24 materials and needed a couple of samples. I took the two
25 small containers of V-31 and V-34 from the cabinet and

1 opened them only to find that both of them had separated,
2 the V-34 more than the V-31. I was surprised as you can
3 imagine. We cannot market a composite that has separation.
4 Have you run any tests to check this out? Please advise.

5 Did I read that correctly?

6 A. Very correctly.

7 Q. All right. So is it fair to say that as of the date of
8 this letter, July 12th, 1993, at least with respect to V-31
9 and V-34, there appeared to be a separation problem?

10 A. Correct.

11 Q. And that's a problem that you indicated persisted for
12 some period of time?

13 A. It was haunting us.

14 Q. Haunting you?

15 A. (Moves head in affirmative manner.)

16 Q. And V-34, am I correct that that was the last
17 formulation that you prepared?

18 A. Yes.

19 Q. So would it be fair to say that as of July 1993, you
20 were still experimenting in terms of arriving at a
21 satisfactory formulation for a flowable composite?

22 A. No, I did not because I assume this will have to go now
23 the next phase of pilot plant or production runs which will
24 be different.

25 Q. So you assumed that someone else would take over that

1 task?

2 A. Correct.

3 Q. Now, were you aware that after the responsibilities for
4 manufacturing the product were transferred to Sci-Pharm
5 that Sci-Pharm continued to make changes in the formulation
6 of the product?

7 A. Sure.

8 Q. And you're aware that Sci-Pharm actually continued to
9 make changes to the formulation of the product virtually up
10 to the time that the product Revolution was marketed?

11 A. Correct.

12 Q. Let's look at Exhibit 57, the '527 patent, and
13 specifically let's look at the claims. Well, I'm sorry.
14 Let's first look at column 8, last two paragraphs. That's
15 not it.

16 Have you looked at the '527 patent before,
17 Mr. Bryan?

18 A. Quite many times.

19 Q. All right. Then are you familiar with this portion of
20 the patent, it's column 8, lines 66 to column 9, line 6,
21 and let's look at the first portion of that.

22 Am I correct that in this passage, Mr. Bryan,
23 Dr. Hasel or his patent attorney set out a number of ways
24 of making a flowable composite that will satisfy the -- the
25 invention?

1 MR. LEE: I object, Your Honor. This goes well
2 beyond the scope of direct.

3 THE COURT: Overruled.

4 BY MR. BROWN:

5 Q. Let me rephrase the question, Mr. Bryan.

6 A. Please do.

7 Q. I'm getting a blank look, and I think that's a fair
8 response to the question?

9 A. I don't understand.

10 Q. Fair enough. Am I correct, Mr. Bryan, that the patent
11 discloses a number of ways of making a flowable composite
12 suitable for use with the method described by Dr. Hasel in
13 his patent?

14 A. I don't see that.

15 Q. Okay. Well, in this passage, am I correct that he
16 indicates that, for example, all the inorganic fillers in
17 TABLE A or TABLE B can be replaced with a five to one
18 mixture of silanated glass, et cetera.

19 Do you see that passage?

20 A. No, I don't.

21 Q. Maybe we can highlight that for Mr. Bryan.

22 A. I have something different.

23 Q. Are you now seeing that highlighting, Mr. Bryan?

24 A. But I don't know what -- TABLE A and TABLE B can be
25 replaced with five to one mixture of silanated glass.

1 Q. Do you see that now?

2 A. Yes.

3 Q. All right. Let's go to the next paragraph and if we
4 could highlight that, please. That's right.

5 Am I correct in the next paragraph, Dr. Hasel or
6 his patent attorneys say, Alternatively, commercially
7 available bonds can be used. Also for the curable
8 composition for restoration, a thicker, universal paste
9 type composite material such as P-50 or Z-100 from 3M can
10 be diluted with a diluent such as HEMA or TEGDMA to the
11 desired viscosity.

12 Such a material, although not as preferred as the
13 composition of TABLE B, can be used for restoring teeth
14 with the method of the present invention.

15 Do you see that?

16 A. I see that.

17 Q. So you understand that in the patent a number of ways
18 are described of making a material that is suitable for use
19 with the method that Dr. Hasel has described, correct?

20 A. I don't see the method.

21 Q. I thought you had indicated, Mr. Bryan, that you had
22 looked at this patent a number of times?

23 A. Many.

24 Q. All right. Well, let's then look at the claims. Let
25 me back up first. Am I correct that in the passage I just

1 read, it describes as an example of a suitable material
2 using a mixture of Silux and Scotch Bond to make a flowable
3 composite?

4 A. I would never consider that suitable.

5 Q. That's not my question, Mr. Bryan. Remember the
6 agreement now.

7 A. Okay. So -- what's the question again? It's no, no
8 good.

9 Q. My question is whether -- does the patent describe as
10 an example using a mixture of Silux and Scotch Bond to make
11 a flowable composite?

12 MR. LEE: Your Honor, I object to that. He
13 doesn't have the patent in front of him. It's a large
14 document. He hasn't looked at it for a while.

15 THE COURT: I'm going to overrule the objection.
16 I think what is going on, Mr. Brown is asking him some
17 trade names that are set forth in this particular document
18 in a different manner. Am I not correct?

19 BY MR. BROWN:

20 Q. I mean, is that your problem, Mr. Bryan?

21 A. No. My problem is that this statement will never work.

22 Q. All right. That's --

23 A. Not suitable as a flowable composite.

24 MR. BROWN: Move to strike as nonresponsive, Your
25 Honor.

1 THE COURT: And that motion will be granted and
2 that response will be struck. Maybe I have trouble with
3 the question. I don't see the word Scotch Bond, for
4 example, but I see 3M something.

5 THE WITNESS: P-50.

6 THE COURT: So P-50 is Scotch Bond?

7 THE WITNESS: Yes. Scotch Bond is a different
8 one. Those are composites. There is no Scotch Bond here
9 at all.

10 THE COURT: I'm sorry I started this. Mr. Bryan,
11 you and I can have a conversation some other time.

12 THE WITNESS: All right.

13 THE COURT: Not here in the courtroom.

14 BY MR. BROWN:

15 Q. Am I correct that Silux is a paste composite from 3M?

16 A. Silux, yes, is a paste.

17 Q. All right. So Silux would fall in the same category as
18 P-50 or Z-100?

19 A. The older type.

20 Q. And then with respect to Scotch Bond, that's a resin,
21 right, a resin with a small amount of filler, right?

22 A. Yes.

23 Q. And so that would be comparable to the HEMA and TEGDMA,
24 correct?

25 A. (Moves head in affirmative manner.)

1 Q. All right. Now, were you aware that prior to your
2 retirement from 3M that Dr. Hasel was experimenting with a
3 mixture of Silux and Scotch Bond?

4 A. I was not aware of that because I would have told him
5 that --

6 Q. Mr. Bryan, please.

7 A. All right. I was not familiar.

8 THE COURT: I'll sustain the objection. Just
9 answer the question.

10 BY MR. BROWN:

11 Q. And would it be fair to say that even as late as your
12 deposition in June of 2000, you had never heard of mixing
13 Silux with Scotch Bond to prepare a dental formulation,
14 correct?

15 A. Oh, I heard. I heard. Hasel was the one, but I
16 don't --

17 Q. All right. Thank you, Mr. Bryan. Would you
18 acknowledge that at least this Silux/Scotch Bond mixture
19 was the idea of Dr. Hasel?

20 A. Maybe. I don't know.

21 Q. And you had nothing to do with --

22 A. No.

23 Q. -- that mixture?

24 A. No, I would never do that.

25 Q. Now, if we look at the claims in the '527 patent and we

1 focus, let's start with Claim 1.

2 MR. LEE: Your Honor, I'll object to this on the
3 grounds that it, again, goes beyond the scope of direct,
4 and also Mr. Bryan's qualifications as an interpreter of
5 claims haven't been established, and I don't think he has
6 any.

7 THE COURT: Well, if the objection is to this
8 line of questioning only, I'm going to overrule the
9 objection. I'll explain later, if you want me to, why.
10 The other part of it, I'm not sure, and until we get to
11 that, I'll just -- we'll just hold on that.

12 I don't disagree with you, but I don't know if
13 that is where Mr. Brown is going to go with this.

14 BY MR. BROWN:

15 Q. My question, simply, Mr. Bryan, is whether in looking
16 at Claim 1, for example, in the '527 patent, do you see any
17 formula that is part of the claim?

18 A. No.

19 Q. And if we look at -- and by formula, you understand I'm
20 referring to a formula for a flowable composite, right?

21 A. Okay.

22 Q. And if we look at Claim 7 of the '527 --

23 A. These claims appear so -- they are so --

24 Q. Let's try to zoom in so it's easier for you to read.

25 When you look at Claim 7, am I correct that you do not see

1 any formulaic requirement in that claim?

2 A. No. Very general.

3 Q. Next let's look at Claim 14. Do you see that claim,
4 Mr. Bryan? Would it be fair to say, again, that that claim
5 doesn't have a formulaic requirement for a flowable
6 composition?

7 A. To a certain degree, it has because the filler portion
8 is between seven to three and three to seven.

9 Q. But nothing beyond that?

10 A. That's specifying the filler portion.

11 Q. Right. So for example there is no specific requirement
12 as to whether there is fumed silica or how much fumed
13 silica may be present?

14 A. Very general.

15 Q. All right. Let's go to the '567 patent, which is
16 Exhibit 71, and looking at those claims, can we focus on
17 the claims.

18 Looking at those claims, Mr. Bryan, would it be
19 fair to say that those claims also impose no requirement in
20 terms of a formula for the flowable composite that is used
21 as part of the method described by Dr. Hasel?

22 MR. LEE: I would object unless he can actually
23 read the claims, Your Honor.

24 THE WITNESS: I cannot read the claims.

25 BY MR. BROWN:

1 Q. Then that's a fair response. Let's zoom in on the
2 claims and give you a chance to read them. Is that any
3 better, Mr. Bryan?

4 A. A little better. Which one do you want me to read?

5 Q. Well, you pick whichever one you like. Do you want to
6 start with Claim 1? Do you have --

7 A. Wherever you like.

8 Q. Let me give you a hard copy, Mr. Bryan, so this is a
9 little easier.

10 May I approach the witness?

11 THE COURT: You may.

12 THE WITNESS: Thank you. Yes, there is no
13 formulation.

14 BY MR. BROWN:

15 Q. As part of the claims, correct?

16 A. I don't see any formulations.

17 Q. Okay.

18 A. Very general.

19 Q. Now, I would like to, if we can, go back briefly to
20 Defendant's Exhibit 52.

21 A. Oh.

22 Q. That's the July 14th, 1992, letter from Dr. Hasel to
23 you. Do you have that? That's up on the screen.

24 A. Yes. Yes, I have.

25 Q. And I think, well correct me if I'm wrong, and I'm sure

1 you will, Mr. Bryan, but did you indicate this morning that
2 Palfigue RBC is a sealant?

3 A. It's a resin bonded ceramic. That's what RBC stands
4 for.

5 Q. Isn't it a fact that Palfigue RBC is a paste composite?

6 A. It's a paste composite.

7 Q. And isn't it a fact that the material that Dr. Hasel
8 was talking about from Tokuyama was also a paste composite?

9 A. I don't know what the material was.

10 Q. So you just don't know?

11 A. It doesn't indicate what material.

12 Q. Now, were you in court last week when Dr. Hasel
13 described the technique for filling a tooth using a needle
14 tip syringe to store, deliver and apply a flowable filling
15 material to the hollow of a tooth?

16 A. Yes, I was.

17 Q. And is it fair to say that as far as you are concerned,
18 manipulating the filling material with the tip of a needle
19 is not feasible?

20 A. Correct. It's not feasible.

21 Q. And even if it were feasible, it would have no
22 practical use. That's your opinion?

23 A. Correct.

24 Q. So you would certainly take no credit for the concept
25 of manipulating a filling material placed in a tooth with a

1 **needle tip, correct?**

2 **A. Correct.**

3 MR. BROWN: I have no further questions. Thank
4 you, Mr. Bryan.

5 THE COURT: Redirect?

6 MR. LEE: Yes, Your Honor.

7 THE WITNESS: Do you want these back?

8 MR. BROWN: Thank you, Mr. Bryan.

9 THE WITNESS: Thank you.

10 THE COURT: Go ahead, Mr. Lee. Whenever you're
11 ready.

12 MR. LEE: Okay. Thank you, Your Honor.

13

14 **(THOMAS BRYAN)**

15 REDIRECT EXAMINATION

16 BY MR. LEE:

17 Q. Do you have a copy up there of your laboratory
18 notebook?

19 A. Yes, I still have it.

20 Q. If you could look through that with respect to the
21 following question. You were asked whether there were
22 references to Dr. Hasel in that notebook. Are there
23 references to any other doctors in that notebook?

24 A. I was not very much interested in any references, but I
25 don't think there is. Maybe there is. Yes, there is