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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91244593
Party	Defendant JH Biotech, Inc.
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Date	06/15/2020
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Mark: SEEDUP  
Serial No. 87/953,971  
Date of Filing: 06-08-2018

Cytozyme Laboratories, Inc.	)	
	)	
Opposer,	)	Opposition No.: 91244593
	)	
vs.	)	
	)	
JH Biotech, Inc.	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF FILING**

Pursuant to Trademark Rules 2.123 and 2.125, Applicant JH Biotech, Inc. hereby files with the Board, and notifies Opposer of the filing of the trial deposition transcript of the cross-examination of Opposer’s witness, Eric Chandler Baughman which was taken on May 6, 2020.

          /s/ Ralph D. Chabot            
Ralph D. Chabot  
Attorney for Applicant  
JH Biotech, Inc.

Dated: June 15, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing:

NOTICE OF FILING

has been served on Peter M. de Jonge of Thorpe North & Western, LLP, counsel for Opposer, by forwarding said copy on June 15, 2020 via email to: [dejonge@tnw.com](mailto:dejonge@tnw.com); [jillaine.chaston@tnw.com](mailto:jillaine.chaston@tnw.com); [kaelynn.moultrie@tnw.com](mailto:kaelynn.moultrie@tnw.com); [aimee.kaderabek@tnw.com](mailto:aimee.kaderabek@tnw.com); [litigation@tnw.com](mailto:litigation@tnw.com).

/s/ Ralph D. Chabot

Ralph D. Chabot  
Attorney for Applicant  
JH Biotech, Inc.

Date: June 15, 2020



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# Transcript of Eric Chandler Baughman

**Date:** May 6, 2020

**Case:** Cytozyme Laboratories, Inc. -v- JH Biotech, Inc. (TTAB)

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 -----  
3 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
4 -----

5 Cytozyme Laboratories, Inc.,

6 Opposer,

7 v.

8 JH Biotech, Inc.,

9 Applicant.  
10 -----

11 In the Matter of:

12 Mark: SEEDUP Serial No. 87/953,971

13 Date of Filing: 06-08-2018

14 Opposition No.: 91244593  
15

16 TELEPHONIC DEPOSITION CROSS-EXAMINATION OF

17 ERIC CHANDLER BAUGHMAN

18 Wednesday, May 6, 2020

19 12:02 p.m.  
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23 Job No.: 296799

24 Pages: 1 - 31

25 Reported By: Debra A. Bollman, RMR, CSR No. 11648

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TELEPHONIC DEPOSITION OF ERIC CHANDLER

BAUGHMAN:

Witness location:

Salt Lake City, Utah

Pursuant to notice, before Debra Bollman  
Farfan, Registered Merit Reporter, Certified  
Realtime Reporter and Certified Shorthand Reporter  
No. 11648, in and for the State of California.

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A P P E A R A N C E S

ON BEHALF OF OPPOSER CYTOZYME LABORATORIES

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I N D E X

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I N D E X O F E X H I B I T S

EXHIBITS	DESCRIPTION	PAGE
NONE		



1 P R O C E E D I N G S

2 MR. CHABOT: Ralph D. Chabot, counsel for  
3 applicant, JH Biotech, Incorporated.

4 MR. DE JONGE: And Peter de Jonge, counsel  
5 for Cytozyme Laboratories, Inc., Opposer.

6 MS. MANESS: Catherine Maness, counsel for  
7 Cytozyme.

8 S T I P U L A T I O N S

9 THE REPORTER: Will counsel please stipulate  
10 that in lieu of formally swearing in the witness,  
11 the reporter will instead ask the witness to  
12 acknowledge that their testimony will be true under  
13 the penalties of perjury, that counsel will not  
14 object to the admissibility of the transcript based  
15 on proceeding in this way, and that the witness has  
16 verified that he is in fact Eric Chandler Baughman.

17 Counsel, do you agree?

18 MR. DE JONGE: Yes, we stipulate to that.

19 MR. CHABOT: Yes.

20 THE WITNESS: Yes, thank you.

21 MS. MANESS: Yes.

22 Whereupon,

23 ERIC BAUGHMAN,

24 the witness herein, was examined and  
25 testified under penalty of perjury as follows:

1 CROSS-EXAMINATION

2 BY MR. CHABOT:

3 Q. For purposes of describing each company  
4 moving forward, I'm going to describe Cytozyme  
5 Laboratories, Incorporated, as simply Cytozyme, and  
6 JH Biotech, Incorporated, simply as JH Biotech.

7 Mr. Baughman, is the website  
8 [www.cytozyme.com](http://www.cytozyme.com) owned by Cytozyme?

9 A. Yes, it is.

10 Q. Is the website [www.cytozymeag.com](http://www.cytozymeag.com) owned by  
11 Cytozyme?

12 A. Yes, it is.

13 Q. Is Verdesian a distributor of SEED product?

14 A. Yes, they are.

15 Q. Is their website [www.vlsci.com](http://www.vlsci.com)?

16 A. As I recall, that's correct, yeah.

17 Q. If someone was interested in purchasing a  
18 SEED product for the first time, is it true they  
19 would have to speak with a sales representative  
20 before placing an order?

21 A. Yes, that's correct.

22 Q. If someone were to visit either of the  
23 Cytozyme websites, can they place an order online?

24 A. I don't believe either of the websites allow  
25 for direct ordering system.

1           So the answer would be no to that.

2           Q.   And would the same be true for the Verdesian  
3 website to your knowledge?

4           A.   You know, I've not looked in detail at the  
5 Verdesian website, so I wouldn't be able to answer  
6 that question.

7           Q.   Okay.  Isn't it true that sales  
8 representatives will visit customers at their place  
9 of business?

10          A.   That's correct.  Among other things, but,  
11 yeah.

12          Q.   Was any document provided as part of your  
13 declaration indicating that a SEED product could be  
14 ordered online?

15          A.   I believe it was described in there that  
16 online orders or inquiries could be made for the  
17 product, that's correct.

18          Q.   My question was was there any document  
19 provided as part of your exhibits to your  
20 declaration indicating --

21               MR. DE JONGE:  I'm sorry to interrupt,  
22 Ralph.  If -- I was just going to caution  
23 Mr. Baughman.  If he needs to look at the documents,  
24 he's able to do so.  Is that fair, Ralph?

25               MR. CHABOT:  Oh, yes, that is correct.  Yes,

1 yes, please. I believe --

2 MR. DE JONGE: Would you mind asking that  
3 question again, please, as he's looking at these?

4 MR. CHABOT: Sure.

5 BY MR. CHABOT:

6 Q. Was any document provided as part of your  
7 declaration indicating that SEED can be ordered  
8 online?

9 A. I'm trying to find that, Peter. But, again,  
10 we had indicated -- okay.

11 Retail stores, catalogs, online.

12 Yes. So in my declarations, it does mention  
13 that the products can be made available online.

14 And that is true and consistent even today  
15 for some products. But, again, at the time of --  
16 prior to Verdesian, products could be transacted,  
17 ordered and paid for, via online methods.

18 MR. CHABOT: I'm going to object to that  
19 response as nonresponsive. Let me repeat the  
20 question again.

21 BY MR. CHABOT:

22 Q. Was any document provided as part of your  
23 declaration -- and by that I mean exhibits to the  
24 declaration -- indicating that SEED can be ordered  
25 online?

1 MR. DE JONGE: Do you want to look at the  
2 attachments? I think he's asking whether any of the  
3 attachments to the exhibits --

4 MR. CHABOT: That's correct.

5 MR. DE JONGE: Yeah, whether any of those  
6 attachments...

7 THE WITNESS: Yeah, so it looks -- it  
8 appears that in one of the exhibits -- I mean, there  
9 are references to the -- to the websites, cytozymeag  
10 and also Verdesian, leading more to information  
11 rather than citing specific ordering guidelines.

12 But, as I said, I'm sure that what my  
13 statement says, that the products could be ordered  
14 online, and that's supported in some of the  
15 exhibits, I believe the answer would be yes, there  
16 is information to that extent.

17 BY MR. CHABOT:

18 Q. Could you please identify the specific  
19 exhibit that you're talking about that you believe  
20 supports the allegation that the SEED product can  
21 be ordered online.

22 A. So it looks as though it's under Exhibit 6.

23 MR. DE JONGE: And the page he's looking at,  
24 it's Bates stamped. That exhibit appears to be a  
25 little bit thick. But it's CYTOZYME0101 is the

1 Bates stamp number that he's looking at.

2 I hope you don't mind me sort of helping him  
3 with this on the documents, Ralph.

4 MR. CHABOT: Not at all.

5 MR. DE JONGE: Okay.

6 BY MR. CHABOT:

7 Q. So it's your testimony today that the Bates  
8 stamped CYTOZYME0101, which is part of Exhibit 6 to  
9 your declaration, is provided as indicating SEED  
10 can be ordered online?

11 A. Again, it's -- you know, it's referencing  
12 the websites of cytozymeag and Verdesian more for  
13 the purposes of obtaining information about the  
14 SEED or other products offered through Verdesian.

15 Q. I understand that this particular reference  
16 is providing information about the product, but my  
17 question is: Is there any document provided as part  
18 of your declaration indicating SEED products can be  
19 ordered online?

20 MR. DE JONGE: I'm just going to object  
21 because he's answered your question a couple of  
22 times. You may not like the answer, but he has  
23 answered it.

24 But if you want to clarify.

25 THE WITNESS: Yeah, and I think, you know, I

1 want to be clear that, at points in the past,  
2 customers could order the products online through  
3 Cytozyme.

4 I don't know if Verdesian has a online  
5 ordering system. I suspect there is some way that a  
6 customer, interested customer, could purchase the  
7 products online, but I'm not sure of that.

8 So I guess what I can speak to is that,  
9 according to my declarations, when we talk about  
10 products being available through multiple channels,  
11 including online, that would be a true and accurate  
12 statement at some point in the past.

13 Again, today, because of the relationship  
14 with Verdesian, we do direct inward inquiries of the  
15 product to the distributor.

16 BY MR. CHABOT:

17 Q. Was any document provided as part of your  
18 declaration indicating that SEED can be purchased  
19 using a credit card?

20 MR. DE JONGE: Do you want to look at the  
21 documents again?

22 THE WITNESS: Yeah. So, look, I've reviewed  
23 these. To my knowledge, I don't believe there's  
24 information in the exhibits indicating that  
25 customers can pay for the product using a credit

1 card specifically, no.

2 BY MR. CHABOT:

3 Q. So your answer would be no?

4 A. That's correct.

5 Q. Would it be accurate to say Exhibits 1  
6 through 6 of your declaration are directed to  
7 agriculture businesses?

8 A. What was the last? Agriculture what?

9 Q. Businesses.

10 A. Businesses. Is it fair to say that  
11 Exhibit 1 through 6 pertain to agricultural  
12 businesses?

13 Q. Yes.

14 A. Am I understanding the question correctly?

15 Q. Yes.

16 MR. DE JONGE: I'll just object as vague as  
17 to what you mean by "agriculture businesses." But  
18 to that extent, he can answer.

19 THE WITNESS: You know, I -- from my  
20 perspective, Exhibits 1 through 6 are referring to  
21 and are specific information pertaining to  
22 individual products.

23 I guess, in a broader context -- and, again,  
24 in Exhibit 6, because it contains a website format  
25 and additional information that -- again, in a



1 broader sense, it certainly pertains to a product  
2 supplied and manufactured and produced by a  
3 business.

4 But I'm not sure I understand the specific  
5 question pertaining to a business.

6 BY MR. CHABOT:

7 Q. Okay. So let me -- let me try to make it a  
8 little more specific, then. If you turn to  
9 Exhibit 1.

10 A. Uh-huh.

11 Q. What are the types of seeds that are  
12 described on this page as being treatable with  
13 SEED ?

14 A. This particular product is focused on corn  
15 and soybean crops.

16 Q. And what type of business would be  
17 associated with corn and soybean?

18 A. Agribusiness.

19 Q. Is Exhibit 2 related to agribusiness?

20 A. In the same -- in the same context that 1 is  
21 in relating to the SEED product, I would agree with  
22 that, yes.

23 Q. And for Exhibit 3, would this also be  
24 related -- is SEED being related to agribusiness?

25 MR. DE JONGE: I'm just going to maintain

1 the same vagueness objection. But, with that, he  
2 can answer these.

3 THE WITNESS: Yes, I would say the same.

4 BY MR. CHABOT:

5 Q. Okay. All right. Can you point to any  
6 exhibit in your declaration which is marketing  
7 material directed to a home and garden customer?

8 A. I don't believe there's any in my exhibits.

9 And I would add the caveat that Cytozyme is  
10 engaged in discussions with leading home and garden  
11 companies for collaborations on these products. But  
12 there's nothing in the exhibits specifically.

13 Q. Okay. I'm going to move to strike that last  
14 portion as being nonresponsive to my question.

15 My question was can you point to any exhibit  
16 in your declaration which is marketing material  
17 directed to a home and garden customer?

18 And I believe your answer was no. Is that  
19 correct?

20 A. That's correct.

21 Q. Can you point to any exhibit which is  
22 marketing material directed to a forestry business?

23 A. My response would be the same as the home  
24 and garden. There is no marketing collateral  
25 directed to a forestry customer.

1 Q. Okay. What size containers are used for  
2 selling SEED product?

3 A. Currently, in the United States, the two  
4 size -- two available sizes would be a 5-pound  
5 package and a 25-pound package.

6 Q. I would like to draw your attention to the  
7 Cytozyme response for Interrogatory Number 26, and I  
8 would like to know if that would in any way refresh  
9 your recollection.

10 A. Yes. That, again, I was referring to dry  
11 products. We do sell the liquid in that 1.6 and  
12 2.5-gallon and 30-gallon drum.

13 Q. And 1.6 gallon would be the smallest  
14 container size?

15 A. For the liquid formulation, that's correct.

16 Q. Okay. And approximately how many acres  
17 would a 1.6 gallon container of SEED product treat?

18 A. Again, if I'm not mistaken, I believe it's  
19 roughly equivalent to the 25-pound bucket of dry,  
20 which I think is in the vicinity -- again, depending  
21 on the crop -- 150 to 200 acres.

22 Q. Okay. Can you identify an exhibit to your  
23 declaration that supports SEED products being sold  
24 in brick and mortar stores?

25 A. I'm not sure I understand the question.

1 These are marketing-related materials in the  
2 exhibits.

3 Q. Okay. But I'm saying --

4 A. I can --

5 Q. -- have you provided as any evidence,  
6 documentary evidence, that SEED product is being  
7 sold in brick and mortar retail stores?

8 MR. DE JONGE: And to clarify, when you say  
9 "provided any evidence," you mean as attached to his  
10 declaration?

11 MR. CHABOT: That is correct.

12 MR. DE JONGE: You want to look at the  
13 exhibits. He's asking about the exhibits again.

14 THE WITNESS: Again, for clarification  
15 purposes, Cytozyme sells to a distributor. We do  
16 not sell to brick and mortars directly. But I do  
17 know that the product is available in hundreds of  
18 retail locations.

19 Having said that, is there anything in the  
20 exhibits? Again, these are product and marketing  
21 specific pieces that would not give indication of  
22 brick and mortar sales.

23 BY MR. CHABOT:

24 Q. Thank you. Can you identify an exhibit to  
25 your declaration that supports SEED products being

1 sold to plant nurseries?

2 A. No, I cannot.

3 And I want to make clear for the record that  
4 Cytozyme sells to distribution. What happens beyond  
5 that is their business channel.

6 Q. Okay. I want to strike your response after  
7 the word "No."

8 Next question: Can you identify an exhibit  
9 to your declaration that supports SEED products  
10 being sold through catalogs?

11 A. To the extent that these product flyers and  
12 information would be included in catalogs, that  
13 would be my response to that.

14 Q. But you have not -- but there's no exhibit  
15 which specifically is to a specific catalog,  
16 correct?

17 A. That is correct.

18 Q. Okay. And can you identify an exhibit to  
19 your declaration that supports SEED products being  
20 sold through home improvement stores?

21 A. Not in the exhibits contained in this brief,  
22 no. No, I do not have any information demonstrating  
23 that.

24 Q. Does Cytozyme employ salesmen who take  
25 orders for SEED product from customers?

1 A. No, we do not.

2 Q. In its answer, JH Biotech had cited a number  
3 of similar trademarks which are either registered or  
4 were pending applications at the United States  
5 Patent and Trademark Office. Were you made aware of  
6 these trademarks?

7 MR. DE JONGE: I'll just object. Can you  
8 ask him specifics instead of a -- I don't know how  
9 he can answer such an open-ended question.

10 MR. CHABOT: I just wanted to know if he was  
11 aware of trademarks cited in the answer. But that's  
12 okay. I can move along.

13 MR. DE JONGE: Okay.

14 BY MR. CHABOT:

15 Q. Besides the opposition filed against the  
16 SEEDUP application, has Cytozyme filed any other  
17 opposition proceedings that involve the SEED mark?

18 MR. DE JONGE: If you remember.

19 THE WITNESS: I don't recall. We do -- you  
20 know, again, through the work we do with Peter's  
21 firm and the watch service entailed, we do actively  
22 protect and object to trademarks from time to time  
23 which we view as competitive or similarly confusing,  
24 I should say, to our current registered mark. So,  
25 yes.

1 BY MR. CHABOT:

2 Q. And to the SEED mark, specifically?

3 A. I don't recall anything on SEED  
4 specifically, but -- so I can't give anything --

5 Q. Okay.

6 A. -- additional detail.

7 Q. And besides the -- excuse me. Besides the  
8 opposition filed against SEEDUP, has there been any  
9 cancellation proceedings that involve the SEED mark  
10 against any other mark, to your knowledge?

11 A. Again, I don't recall.

12 Q. Okay. Has Cytozyme filed a lawsuit against  
13 a company called Agri Life LLC?

14 A. No, we have not.

15 Q. Okay. Are you aware that Agri Life LLC  
16 markets a product called BioMantra Seed for crop  
17 fertilizers and soil amendments?

18 A. I've become aware of it through this process  
19 and through some of the interrogatories, and we have  
20 had direct discussions on taking similar steps and  
21 actions to protect our registered trademark with  
22 that entity.

23 Q. So you've had discussions with the owners of  
24 Agri Life LLC regarding --

25 A. We have not had direct discussions with

1       them; we've had direct discussions internally with  
2       our counsel on the matter.

3           Q.    I see.  But wouldn't a product name that  
4       includes the Cytozyme SEED  mark for use as a crop  
5       fertilizer or soil amendment -- would be of a  
6       concern to Cytozyme, would it not?

7           A.    Yes, it would.

8           Q.    Okay.  And would not customers be more  
9       likely to be confused with this product than the  
10       SEEDUP product?

11           MR. DE JONGE:  I'll object.  Calls for a  
12       legal conclusion.

13           MR. CHABOT:  Okay.

14       BY MR. CHABOT:

15           Q.    Can you identify an exhibit to your  
16       declaration that describes SEED  as being used for  
17       horticulture?

18           MR. DE JONGE:  I'll object as being vague  
19       and ambiguous.

20           But you can answer if you can.

21           THE WITNESS:  Again, the exhibits provided  
22       are specific to broadacre crops.  This is an example  
23       of a crop-specific flyer.  So we do have other  
24       flyers pertaining to horticultural crops that are  
25       engaged in sale and development of SEED  in



1 horticultural segment.

2 MR. CHABOT: I'm going to again strike as  
3 being non-responsive.

4 BY MR. CHABOT:

5 Q. My question was: Can you identify an  
6 exhibit to your declaration that describes SEED  
7 being used for horticulture?

8 A. No, I cannot.

9 Q. Can you identify an exhibit to your  
10 declaration that describes SEED used in the field  
11 of forestry?

12 MR. DE JONGE: I'll object. Vague and  
13 ambiguous again. But he can answer.

14 THE WITNESS: I thought I had responded to  
15 that question earlier. No, there are no exhibits  
16 that specifically relate to forestry segment.

17 BY MR. CHABOT:

18 Q. Did you sell SEED product for forestry use  
19 in each calendar year from 2014 through 2017?

20 A. We -- I would have to check and see if we  
21 made commercial sales. We were engaged in a project  
22 with a large multinational company evaluating that  
23 opportunity. Whether commercial sales were made, I  
24 would need to check the records.

25 Q. I'd like to direct your attention to the

1 Cytozyme response to Interrogatory Number 10 and see  
2 if that would refresh your recollection.

3 A. You're asking based on the sales figures  
4 provided?

5 Q. Yes.

6 A. Again, I wouldn't -- I wouldn't recall from  
7 that broad, general information there. And if this  
8 is referring to SEED mark, again, I wouldn't know.  
9 We were engaged in a development project for the  
10 forestry segment with a large partner, and this  
11 doesn't allow me enough information to be able to  
12 give you a detailed response.

13 Q. Well, let's take it one year at a time.

14 For calendar year 2014, did you sell SEED  
15 product for forestry use?

16 MR. DE JONGE: I'll just object. Asked and  
17 answered.

18 But go ahead.

19 THE WITNESS: No, we did not. And if I were  
20 to conjecture a guess, it would have been in '18 or  
21 '19. But, again, I'm not certain of the details.

22 BY MR. CHABOT:

23 Q. Did you sell SEED product for forestry use  
24 in 2016?

25 MR. DE JONGE: Same objection.

1 THE WITNESS: No.

2 BY MR. CHABOT:

3 Q. Did you sell SEED product for forestry use  
4 in calendar year 2017?

5 MR. DE JONGE: Same objection.

6 THE WITNESS: No.

7 BY MR. CHABOT:

8 Q. And for the calendar years 2014, 2016, and  
9 2017, would it be true that you had no sales of  
10 agribusiness -- or sale of -- strike that.

11 Would you agree that there were no SEED  
12 product sales to agribusiness for years 2014, 2016,  
13 and 2017?

14 A. For the SEED brand?

15 Q. Any SEED product.

16 A. We did sell probably quite significant  
17 quantities of SEED product, just not under SEED  
18 brand.

19 Q. Well, I'm talking about product bearing the  
20 SEED mark which is at issue in this opposition.

21 So, again, my question is --

22 A. Then -- then -- yeah, when you say  
23 "product," I was mistaking that for the product  
24 itself. And, again, we have a branded business and  
25 a non-branded business.

1           And for the -- for the purpose of clarifying  
2 SEED branded product, no, we did not sell in those  
3 years.

4           Q. And I noticed that in 2015 there was only  
5 \$600 reported in your interrogatory response -- or  
6 response to Interrogatory Number 10.

7           Do you recall if that was a single sale?

8           A. I don't recall.

9           Q. Okay. I'd like to turn now to Cytozyme's  
10 notice of reliance, Exhibit 1, page 15, and it is  
11 Bates stamped CYTOZYME0040.

12           Let me know when you have it.

13           A. Yes, we're here.

14           Q. Okay. I'd like you to take a moment and  
15 review, particularly, the first paragraph.

16           A. Okay.

17           Q. Do you recognize this document?

18           A. Yes, I do.

19           Q. Whose name is listed at the bottom of the  
20 document?

21           A. My name, Eric Baughman.

22           Q. Is that your signature?

23           A. Yes, it is.

24           Q. And the date you signed was July 26, 2018?

25           A. Yes.

1 Q. Isn't it true you declared that SEED has  
2 been in continuous use in interstate commerce for  
3 five consecutive years from the August 21st, 2012,  
4 issue date?

5 A. Yes.

6 Q. Would you agree the facts you declared in  
7 this document to be true are not true?

8 A. True.

9 Q. You're stating that you have had five years  
10 of continuous use when there were no sales for three  
11 of the five years, 2014, 2016, and 2017?

12 MR. DE JONGE: I'll object as vague and  
13 ambiguous question. And asked and answered.

14 BY MR. CHABOT:

15 Q. Would you answer the question, sir?

16 A. Yeah, you know, you're referring to  
17 commercial sales of the SEED brand. "Use" is a  
18 little ambiguous because, again, these products and  
19 the quantities that were sold from year to year  
20 could have been used in subsequent following years.  
21 So the question is ambiguous, in my view.

22 But the company was engaged in development  
23 activities and using the mark with an eye towards  
24 developing and growing the business. So I don't  
25 view those as being at odds with one another.

1 Q. Would you admit that SEED customers are  
2 sophisticated purchasers?

3 MR. DE JONGE: I'll object. Vague and  
4 ambiguous and requires a legal understanding of what  
5 "sophisticated" means.

6 BY MR. CHABOT:

7 Q. Answer, if you know.

8 A. I don't think it's a black-and-white answer.  
9 I would say that some farmers are more sophisticated  
10 than others.

11 Q. Does Cytozyme provide advice to potential  
12 customers?

13 MR. DE JONGE: I'll say vague and --  
14 Object. Vague and ambiguous.

15 BY MR. CHABOT:

16 Q. Has Cytozyme --

17 A. They provide technical understanding of the  
18 product, use guidelines, and other technically  
19 related information to the product.

20 Q. And that information would typically be  
21 provided to a prospective customer prior to the  
22 prospective customer purchasing the product; is that  
23 correct?

24 A. That's a fair statement, yes.

25 Q. So with the --

1           A. And, sorry, I want to go back to the point,  
2           too, that Cytozyme does not have sales teams. We  
3           have R&D and technical teams. Our distribution  
4           partners and the retail partners are the  
5           organizations that have large sales organizations.

6                        So our activities are relegated more to  
7           providing the technical training and product detail  
8           to those sales organizations.

9           Q. Understood. And I would assume Verdesian  
10          has a sales staff that is used to sell SEED product  
11          to potential customers.

12          A. That is correct.

13          Q. Okay. And does -- to your knowledge, does  
14          their sales staff do -- provide advice to customers  
15          regarding SEED ?

16          A. Yes, they do.

17          Q. Okay. Is it reasonable to say that  
18          Cytozyme's customers, either directly through  
19          Cytozyme or through Verdesian, are well informed  
20          about the SEED product before they make a purchase?

21                       MR. DE JONGE: I'll object as vague and  
22          ambiguous and asks him to speculate.

23                       THE WITNESS: Yeah, again, it's an arm's  
24          length. When you work with a distribution partner,  
25          they are the direct selling organization. So I

1 would not be able to give you a very good assessment  
2 as to the level of sophistication of the end user  
3 and the customer.

4 BY MR. CHABOT:

5 Q. Is it fair to say Cytozyme customers are not  
6 impulse purchasers?

7 MR. DE JONGE: I'll object. Vague and  
8 ambiguous, and it requires a legal understanding of  
9 what "impulse" means.

10 BY MR. CHABOT:

11 Q. Mr. Baughman, what do you understand  
12 "impulse purchaser" to mean?

13 A. Somebody who makes a purchasing decision  
14 with limited information. Or on emotional basis.

15 Q. Do you believe that those are potential  
16 customers who would purchase a SEED product?

17 MR. DE JONGE: I'll object. Asks him to  
18 speculate.

19 THE WITNESS: You know, again, I wouldn't be  
20 able to say. I'm not involved in the customer sale  
21 end of things and really not in a position to make  
22 or draw any conclusions about how purchasers make  
23 their decisions, whether it involves impulse or not,  
24 or the level of sophistication of the buyer.

25 BY MR. CHABOT:



1 Q. I believe you previously testified that a  
2 1.6-gallon container of SEED would treat between  
3 approximately 150 and 200 acres. Would it be fair  
4 to say that the typical home and garden customer  
5 owns less than 25 acres?

6 MR. DE JONGE: Object. Asks him to  
7 speculate.

8 But go ahead.

9 THE WITNESS: That would seem logical to me,  
10 yes.

11 BY MR. CHABOT:

12 Q. So wouldn't you agree that it's unlikely  
13 there will be customers who purchase even the  
14 smallest size of SEED product, a 1.6 gallon  
15 container, for their home and garden use?

16 A. That's -- that's a fair -- fair statement,  
17 yes.

18 Q. Okay. And I have no further questions.

19 A. Okay.

20 (Deposition concluded at 12:45 p.m. 29)

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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2

3

4 I, Debra A. Bollman, Certified Shorthand  
5 Reporter and within and for the State of California  
6 do hereby certify:

7

8 That Eric Baughman, the witness whose deposition is  
9 hereinbefore set forth, was duly sworn under penalty  
10 of perjury by me before the commencement of such  
11 deposition and that such deposition was taken before  
12 me and is a true record of the testimony given by  
13 such witness.

14

15 I further certify that the adverse party,  
16 JH Biotech, Inc., was represented by counsel at the  
17 deposition.

18

19 I further certify that the deposition of  
20 Eric Baughman, occurred telephonically, Wednesday,  
21 May 6th, 2019, commencing at 12:02 p.m. to 12:45  
22 p.m.

23

24 I further certify that I am not related to  
25 any of the parties to this action by blood or

1 marriage, I am not employed by or an attorney to any  
2 of the parties to this action, and that I am in no  
3 way interested, financially or otherwise, in the  
4 outcome of this matter.

5

6 IN WITNESS WHEREOF, I have hereunto set my  
7 hand this 16TH day of MAY, 2020.

8



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\_\_\_\_\_  
11 Debra Bollman, RMR, CRR, CSR No. 11648

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No. 296799

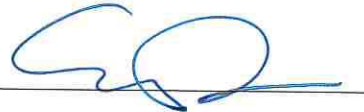
Re: Deposition of **Eric Chandler Baughman**  
Date: 5/6/2020  
Case: Cytozyme Laboratories, Inc. -v- JH Biotech, Inc. (TTAB)  
Return to: transcripts@planetdepos.com

ACKNOWLEDGMENT OF DEPONENT

I, Eric Chandler Baughman, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

6/5/20

(Date)



(Signature)