

US Patent and Trademark Office

**Amneal Pharmaceuticals LLC
and Par Pharmaceutical, Inc.,
v.
Jazz Pharmaceuticals, Inc.,**

CONFIDENTIAL

***Deposition of:*
Robert Valuck, Ph.D., R.Ph. - Vol. 2
October 9, 2015**

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

AMNEAL PHARMACEUTICALS LLC
AND PAR PHARMACEUTICAL, INC.,

Petitioners,

v.
JAZZ PHARMACEUTICALS, INC.,

Patent Owner.

Case IPR2015-00546
Patent 7,765,106

DEPOSITION OF
Robert Valuck, Ph.D., R.Ph. - Volume 2
October 9, 2015
Greenwood Village, Colorado
Lead: Eric Stops, Esquire
Firm: Quinn Emanuel

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1 * * *

2 Greenwood Village, Colorado

3 9:29 a.m.

4 * * *

5

6 ROBERT VALUCK, Phd, RPh,

7 having been previously sworn, was examined

8 and testified as follows:

9 EXAMINATION

10 BY MR. BURGYP:

11 **Q. Good morning, Dr. Valuck.**

12 A. Good morning.

13 **Q. Welcome back to day 2 of your deposition.**

14 **As you know, my name is Aziz Burgy. I**

15 **represent Par Pharmaceutical, Inc., in this matter. And**

16 **I'm going to be questioning you on redirect on some of**

17 **the topics that counsel, Mr. Eric Stops, asked you about**

18 **yesterday.**

19 **Do you understand that?**

20 A. Yes.

21 **Q. Okay. And you understand that you're still**

22 **under oath today?**

23 A. Yes.

24 **Q. Before we get started today, I wanted to ask**

25 **you whether you had any discussions with counsel between**

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1 **yesterday's cross-examination and today's redirect**

2 **questioning by me about your testimony today.**

3 A. No.

4 **Q. And did you do anything to prepare for your**

5 **deposition testimony today?**

6 A. No.

7 **Q. Counsel yesterday asked you about your**

8 **declarations that you submitted in the IPR proceedings**

9 **that are related to the Jazz patents. Do you recall**

10 **that?**

11 A. Yes.

12 **Q. Okay. Do you have any corrections to make to**

13 **your declarations that you know of? And there are**

14 **several declarations from yesterday, so feel free to**

15 **take a look.**

16 A. If you don't mind. There's one thing that I

17 believe is a typo. As we were looking at the '730

18 declaration yesterday, we were talking about --

19 **Q. Can you tell me what page you're on?**

20 A. Yes. I'm talking about page 40. There's an

21 instance in the claim chart that refers to the -- the

22 video and transcript. And I refer in the middle of that

23 claim chart the entry "Pharmacy staff receives faxed

24 prescription and enters information from it into a

25 computer" and make reference to the video at PAR1006,

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1 V7, 0 to 16 seconds. There -- and I believe there may

2 be other instances -- there may be another one at page

3 34 similarly.

4 The places I refer to that -- that particular

5 instance from the video, I believe it's -- should be

6 segment -- Video Segment 8 rather than Video Segment 7

7 that I was referring to.

8 **Q. And how did you come about to learn that that**

9 **was an error in the citation?**

10 A. In -- in reviewing the -- rewatching the video

11 for prep myself the last couple of weeks. I rewatched

12 the video and reread this. And the videos submitted to

13 the -- as far as the -- backing up the references are in

14 little pieces. And reviewing them, looked at Video 7,

15 and it wasn't -- wasn't what I expected to be for that

16 step. It was really Video Segment 8 that I'm really

17 referring to.

18 So that's a typo in any instance. And those

19 are the two that I see from having -- looking back at

20 this yesterday. Those are the two that I noticed. If

21 there's other instances where I refer to that entry --

22 pharmacy staff receives and enters into a computer --

23 referring to Video Segment 7, any instance of that

24 should be 8. And I -- and those are the two that I know

25 of. But if there's others, it would be the same

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1 correction.

2 **Q. Okay. So just so the record is clear, if**

3 **you're citing PAR1006, V7 from time stamp 0 to 16**

4 **seconds, that citation should be changed to Video 8 for**

5 **all applicable citations for all your declarations?**

6 A. Yes.

7 **Q. Okay.**

8 A. That's the only one that I -- that I noticed as

9 a -- as a correction for my declarations.

10 **Q. Okay. Let's move on, Dr. Valuck.**

11 **Counsel asked you yesterday whether you have**

12 **been paid for your work on the six IPR declarations that**

13 **are the subject of the deposition. Do you recall that?**

14 A. Yes.

15 **Q. You testified that you have not been**

16 **compensated for your work. Do you recall that?**

17 A. Yes.

18 **Q. And why have you not been compensated for your**

19 **work?**

20 A. I just haven't submitted invoices yet.

21 **Q. Are Par Pharmaceutical, Inc., and Amneal aware**

22 **that you have not submitted any invoices for your work**

23 **on the six IPR declarations?**

24 MR. STOPS: Objection. Form.

25 A. I made them aware this week when -- when we met

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1 in -- prior to the deposition I made them aware of that.
2 **Q. (By Mr. Burgy) And why had you not -- why have**
3 **you not submitted invoices yet?**
4 A. I just hadn't gotten around to it yet.
5 **Q. So the client should expect a pretty hefty bill**
6 **from you at some point.**
7 A. Yeah, I suppose that may -- may cause a little
8 bit of angst for accounting maybe. But I just hadn't --
9 I just hadn't done it yet and will be doing so.
10 (Par Exhibit Numbers 1042, 1043, and 1044 were
11 marked.)
12 **Q. Dr. Valuck, I've handed you three documents**
13 **that have been marked as Exhibits PAR 1042, 1043, and**
14 **1044. Do you see that?**
15 MR. STOPS: Which one is which?
16 MR. BURG Y: Sorry. And I was just going to get
17 to that.
18 MR. STOPS: Sorry.
19 **Q. (By Mr. Burgy) So Xyrem -- the document that**
20 **has the Bates Number Xyrem IPR 1 through 4 is -- has**
21 **been marked PAR 1042. And Xyrem IPR 5 through 8 has**
22 **been marked PAR 1043. And Xyrem IPR 9 through 11 has**
23 **been marked 1044.**
24 **Can you please confirm that that is correct on**
25 **the documents that you have before you.**

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1 A. Yes.
2 **Q. Do you recognize these three documents,**
3 **Dr. Valuck?**
4 A. Yes, I do.
5 **Q. And what are these three documents?**
6 A. These are the retainer agreement letters
7 between the law firm or firms and myself related to
8 these six IPRs that I prepared in this matter.
9 **Q. And if we could take the first one, PAR 1042.**
10 **Do you see that?**
11 A. Yes.
12 MR. BURG Y: And just for the record, I'd like
13 to designate this portion of the transcript as
14 confidential under the protective order.
15 (The following portion is designated
16 confidential.)
17 **Q. (By Mr. Burgy) Dr. Valuck, do you see in the**
18 **first sentence it says Par Pharmaceutical, Inc., the**
19 **retaining party, has authorized you to retain -- has**
20 **authorized us to retain you to provide consulting and**
21 **expert witness services to Arent Fox on behalf of the**
22 **retaining party? Do you see that?**
23 A. Yes.
24 **Q. And so who are you retained by with respect to**
25 **these IPRs?**

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1 A. By Par Pharmaceutical, Inc.
2 **Q. Okay. And with respect to PAR 1042, you**
3 **testified that these are the engagement letters that**
4 **encompass your work regarding the IPRs in this case?**
5 A. Yes.
6 **Q. And is this document -- this engagement letter**
7 **at PAR 1042 specific to any of the specific Jazz**
8 **patents?**
9 A. Yes.
10 **Q. Which? And which patents are those?**
11 A. This is specific to the '059 patent and the
12 '988 patent.
13 **Q. Okay. Let's move on to the next document,**
14 **which is PAR 1043. Are you there, sir?**
15 A. Yes.
16 **Q. And briefly, what is this document?**
17 A. This, similarly, is another retainer agreement
18 letter between law firms and myself related to some of
19 the IPR work that I've done here.
20 **Q. And who are the retaining parties?**
21 A. Here it's Amneal Pharmaceuticals, LLC, and Par
22 Pharmaceutical, Inc. Hang on. There's a typo. This
23 one --
24 **Q. Where is that?**
25 A. The first line. It says "Amneal

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1 Pharmaceuticals, LLC (Amneal) and Par Pharmaceutical
2 (Par)," which should be "Par Pharmaceutical, Inc.
3 (Par)" --
4 **Q. Oh, okay. Thank you.**
5 A. -- "collectively have authorized" and such.
6 **Q. Okay. And so Amneal and Par are the retaining**
7 **parties; is that correct?**
8 A. Yes.
9 **Q. And this engagement letter pertains to which**
10 **Jazz patent?**
11 A. This letter specifically pertains to the '730
12 patent.
13 **Q. All right. And this letter encompasses your**
14 **work with respect to the IPR declarations that you've**
15 **submitted with respect to the '730 patent; is that**
16 **correct?**
17 MR. STOPS: Objection. Form.
18 A. Yes.
19 **Q. (By Mr. Burgy) If we can move on to the last**
20 **document, which is PAR 1044. Do you see that?**
21 A. Yes.
22 **Q. And what is this document?**
23 A. Similarly, this is a retainer agreement letter
24 between law firms and myself related to some of the IPR
25 declarations that I've prepared for this matter.

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1 **Q. And who are the retaining parties?**
2 A. On this letter, the retaining parties are
3 Amneal Pharmaceuticals (Amneal) and Par Pharmaceutical,
4 Inc. -- same -- sorry -- same typo --
5 **Q. Okay.**
6 A. -- as on the last letter. The first one should
7 be Par Pharmaceutical, Inc., in the first line. And
8 between Sterne, Kessler, Goldstein & Fox -- Locke Lord
9 is a typo as well. Locke Lord is not involved in this
10 one.
11 **Q. Okay.**
12 A. It's just Sterne, Kessler, Goldstein & Fox and
13 Arent Fox.
14 **Q. And what patents does this engagement letter**
15 **refer to?**
16 A. And this letter refers to the '182 patent, the
17 '106 patent, and the '107 patent.
18 **Q. And does this engagement letter encompass your**
19 **work with respect to the IPR declarations that you've**
20 **submitted with respect to the '182, '106, and '107**
21 **patents?**
22 MR. STOPS: Objection. Form.
23 A. Yes, it does.
24 **Q. (By Mr. Burgy) Okay. You can put that aside.**
25 MR. BURGy: And we can go off the confidential

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1 record.
2 (End of confidential portion.)
3 **Q. (By Mr. Burgy) Dr. Valuck, yesterday you --**
4 **strike that.**
5 **Yesterday counsel asked you about a person of**
6 **ordinary skill in the art. Do you recall that?**
7 A. Yes.
8 **Q. And specifically counsel asked you about the**
9 **qualifications related to a person of ordinary skill in**
10 **the art?**
11 A. Yes.
12 **Q. And specifically you testified that a PharmD**
13 **was the only doctor of pharmacy degree, I believe is**
14 **what you said. Do you recall that?**
15 A. Yes.
16 **Q. What educational background do you have in**
17 **pharmacy?**
18 A. I have a bachelor's degree in pharmacy, a
19 master's degree in pharmacy, and a PhD degree in
20 pharmacy.
21 **Q. How is a PhD in pharmacy different from a**
22 **PharmD, if any?**
23 A. They're -- they're both doctorate degrees, but
24 it -- the doctor of pharmacy degree is a very specific
25 degree. The PharmD is called doctor of pharmacy. The

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1 PhD degree is doctor of philosophy in pharmacy. It's
2 also in the field. It's an advanced degree beyond
3 the -- what we call the entry-level practice degree.
4 And the entry-level practice degrees are either
5 a bachelor's degree in pharmacy or a PharmD degree.
6 Those two degrees -- one of them is a requirement for
7 practice and licensure. Master's and PhD degrees are
8 additional training in research and different aspects of
9 pharmacy, specific aspects.
10 A PharmD degree is advanced training in certain
11 aspects, clinical aspects. Each is advanced training
12 beyond the entry-level training. It's a very -- it's a
13 small thing. But doctor of pharmacy versus doctorate in
14 pharmacy, there are slight differences but both of those
15 exist. So it can be confusing to someone who doesn't
16 know those various degrees exist.
17 **Q. Do you consider yourself to be a person of**
18 **ordinary skill in the art with respect to this case?**
19 A. Yes.
20 **Q. How so?**
21 A. I have a -- what I believe a POSA would have,
22 is one of the entry-level practice degrees in pharmacy
23 as -- one version. So I have a bachelor's degree in
24 pharmacy. I have three to five years of work
25 experience. I have experience in a variety of practice

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1 settings. So I consider myself a POSA.
2 **Q. I'd like to turn to your declaration with**
3 **respect to the '730 patent. You have a pile of exhibits**
4 **that we used yesterday. If you could pull that up.**
5 A. Yes.
6 **Q. Do you have that?**
7 A. Yes.
8 **Q. Do you recall that Jazz's counsel asked you**
9 **about your expertise in this case yesterday? Do you**
10 **recall that?**
11 A. Yes.
12 **Q. And, specifically, if you would turn to page 6**
13 **of your declaration at paragraph 9. Do you see that?**
14 A. Yes.
15 **Q. I'm at the second sentence at paragraph 9 where**
16 **you state, "I am an expert in the fields of drug safety,**
17 **drug abuse prevention, and prescription drug**
18 **distribution."**
19 **Do you see that?**
20 A. Yes.
21 **Q. If we could take each of these in turn. What**
22 **is the basis of your expertise in drug safety?**
23 A. Well, it comes from a variety of different
24 areas. I have specific education and training. I have
25 work experience. I have research experience. I have

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