

2012 WL 10996687 (D.Del.) (Expert Trial Transcript)
United States District Court, D. Delaware.

GALDERMA LABORATORIES, L.P., Galderma, S.A., and
Galderma Research and Development, S.N.C., Plaintiffs,

v.

TOLMAR, INC., Defendant.

No. 10-45-LPS.

March 13, 2012.

Testimony of Plaintiffs' Expert Witness, John C. Jarosz, J.D.

Case Type: Intellectual Property >> Patent

Jurisdiction: D.Del.

Name of Expert: John C. Jarosz, Ph.D., J.D.

Area of Expertise: Accounting & Finance >> Valuation/Appraisal (Non-Real Estate)

Area of Expertise: Accounting & Finance >> Economics/Economist

Representing: Plaintiff

For Galderma Laboratories, L.P., Galderma, S.A., and Galderma Research and Development, S.N.C.: Morris Nichols Arsht & Tunnell, LLP by: Jack B. Blumenfeld, Esq. and Maryellen Noreika, Esq.

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McDermott Will & Emery, LLP by: Jeffrey R. Gargano, Esq., Krista Vink Venegas, Esq., Keith M. Stolte, Esq., Kevin P. Shortsle, Esq., and Lauren Nelson Martin, Esq., (Chicago, Illinois).

Hon. Leonard P. Stark.

MR. SUKDUANG: Good morning, your Honor. Sanya Sukduang.

Galderma would like to call Mr. John Jarosz next.

THE COURT: Okay. Fine.

MR. SUKDUANG: Mr. Jarosz is Galderma's expert in economics and IP evaluation.



JOHN C. JAROSZ, having been first duly sworn, was examined and testified as follows:

THE COURT: Good morning to you.

MR. SUKDUANG: May I approach, your Honor:

THE COURT: You may approach.

(Binders passed forward.)

DIRECT EXAMINATION

BY MR. SUKDUANG:

Q. Mr. Jarosz, could you state your full name for the record, please?

A. John C. Jarosz.

Q. Could you take a look at PTX-120 for me, please?

A. (Witness complies.)

Q. What is this document?

A. It's a copy of my CV as it existed in September of 2011.

Q. Where are you currently employed?

A. Analysis Group Incorporated.

Q. And what is Analysis Group?

A. We are an economic, financial and strategy consulting firm of about 550 people. We help our clients in a variety of business, regulatory and litigation settings.

Q. What is your current position with analysis group?

A. I'm a managing principal of the firm, which means I'm one of the shareowners. There are about five of us in the firm.

I'm also the founder and director of the Washington, D.C. office.

Q. How long have you been employed by the Analysis Group?

A. Since March of 1996.

Q. What did you do prior to joining the Analysis Group?

A. The 10 years prior to that, I was at another economic consulting firm in Washington, D.C. by the name of Putnam Hayes & Bartlett. When I left that firm, I was also that firm's Washington, D.C. office director.

Q. Could you please briefly describe your educational background, starting in college?

A. Yes. I have a B.A. in Economics in Organizational Communication from Creighton University, which is located in Omaha, Nebraska.

After that, I was a fellowship student in the Ph.D. program in Economics at Washington University in St. Louis. There, I completed most but not all the requirements for a Ph.D. in Economics and was awarded a Master's in Economics.

Q. In addition to your bachelor's and master's degrees, have you received any other advanced degrees?

A. Yes. I then went to law school at the University of Wisconsin and received my J.D. from WU.

Q. Are you licensed to practice law in any state?

A. I'm licensed to practice in the State of Wisconsin, but I have been on inactive status for about the last 26 years. Though I have a law degree, I'm a practicing economist.

Q. I'm sure you are happy to have that role as an economist as opposed to a lawyer?

A. I'm the butt of less jokes that way, I think.

Q. As an economist, do you have any particular areas of expertise?

A. Yes. Most of my work is in the area of intellectual property, valuation and evaluation.

Q. And have you offered opinions, expert opinions in other patent cases regarding the issue of commercial success?

A. Yes, many times.

Q. And about how many other cases have you provided a written report or oral testimony regarding the analysis of commercial success?

A. It's a dozen or more times over the years. Perhaps two dozen.

Q. And were any of those cases related to pharmaceutical products?

A. Yes, the vast bulk of them were. When I think about it, I think it's all but one actually were in pharmaceutical settings.

Q. Have you done any other work in the pharmaceutical industry?

A. Yes. I do quite a bit of work in the area of damages estimation, and the area in which I do probably more work than any other area is pharmaceutical settings. I'm not an industry expert but I apply my training in economics and IP valuation to pharmaceutical settings quite frequently.

Q. Have you been previously recognized as an expert in economics and intellectual property protection?

A. Yes, many times.

Q. And have you been so recognized in the District of Delaware?

A. Yes, many times here.

Q. Now, are you a member of any professional organizations or associations?

A. Yes. I'm an member of the American Economics Association, the American Law and Economics Association, the American Intellectual Property Law Association, and the Licensing Executive Society. Just to name a few.

Q. What is the Licensing Executive Society?

A. We're the group of about 6,000 or 8,000 people across the world who devote most of their professional careers to evaluating intellectual property and figuring out the best ways to share intellectual property with other parties.

Q. Have you held any leadership roles in the Licensing Executive Society?

A. Yes. Fairly recently, for a two-year period, I was the Chairman of the Valuation and Taxation Committee. And,

Then a couple years ago, the LES started a certified licensing professional program. I'm a charter member of that group.

I was also asked to be one of the people involved in helping write the exams so that other people can get that certification. It's much more fun to be on that side of the table than on the receiving end.

MR. SUKDUANG: Your Honor, I would like to offer Mr. Jarosz as an expert in the field of economics and intellectual property evaluation.

MS. VENEGAS: No objection.

THE COURT: So recognized.

BY MR. SUKDUANG:

Q. Mr. Jarosz, I'd like to get into what you have been actually asked to do in this case. Can you explain what you have been asked to present testimony on today?

A. I was asked to evaluate whether the inventions described in the patents in suit here have been a commercial success.

Q. Have you prepared a demonstrative to describe what is necessary to conduct this commercial success analysis?

A. Yes, I have.

MR. SUKDUANG: Could you pull up PDX-312 for me, please?

BY MR. SUKDUANG:

Q. And what does this slide represent?

A. It shows the two components that are frequently undertaken to evaluate whether patented inventions have been a commercial success.

The first step is to evaluate whether the product embodying the patents have been successful in the marketplace. And,

The second step is to evaluate whether that success in the marketplace is due to the patented inventions or something else. That is labeled, that second step, nexus to the patented invention.

Q. Now, do you have an understanding of what the patented features and benefits of the patents in suit are?

A. Yes, I do.

Q. Did you prepare a demonstrative to talk about that topic?

A. Yes, I did.

MR. SUKDUANG: Could you pull up PDX-302 for me, please?

BY MR. SUKDUANG:

Q. What do we have here?

A. This is my understanding of the patented feature and the benefits flowing from that patented feature. The patent, as I understand it, allows for increasing the composition of adapalene gel to a concentration of 0.3 percent, and that is effective for the treatment of acne.

I understand from that feature flow three benefits:

No. 1. The resulting product is more effective than 0.1 percent adapalene concentration.

No. 2. The resulting product is well tolerated and safe in patients. And,

No. 3. The safety profile of that resulting product is comparable to that of 0.1 percent concentration.

Q. Now, what did you rely on to understand the patented features and benefits that flow from those feature?

A. Galderma marketing and promotional materials and testimony of several witnesses here: Dr. Maibach, Thiboutot and Orlow.

Q. Now, were you in the courtroom listening to the testimony of Drs. Orlow, Thiboutot and Maibach?

A. Yes, I was here for most but not all of the testimony. I didn't hear all of Dr. Maibach's testimony.

Q. Now, does Galderma currently market a pharmaceutical composition of adapalene in the gel formulation of 0.3 percent concentration of adapalene here in the U.S.?

A. Yes. That product is called Differin 0.3 percent gel.

Q. For what indications has the FDA approved Differin .3 percent gel for?

A. For the treatment of acne vulgaris, which I understand is common acne.

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