

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

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5 COALITION FOR AFFORDABLE DRUGS VII LLC

6

Petitioner

7

v.

8

POZEN INC.

9

Patent Owner

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11 Case No. IPR2015-01718

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Patent No. 8,945,621

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DEPOSITION OF DAVID A. JOHNSON, M.D.

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Washington, D.C.

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August 27, 2016

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Reported by: Mary Ann Payonk

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Job No. 179557

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 August 27, 2016 5 9:00 a.m. 6 7 Deposition of DAVID A. JOHNSON, M.D., 8 held at the offices of Cooley LLP, 1299 9 Pennsylvania Avenue, N.W., Washington, D.C., 10 pursuant to Notice before Mary Ann Payonk, 11 Nationally Certified Realtime Reporter and 12 Notary Public of the District of Columbia, 13 Commonwealth of Virginia, States of Maryland 14 and New York. 15 16 17 18 19 20 21 22 23 24 25</p> <p>3</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (Cont'd.): 2 Danielle C. Pfifferling, Esq. 3 Finnegan, Henderson, Farabow, 4 Garrett & Dunner LLP 5 901 New York Avenue, N.W. 6 Washington, D.C. 20001 7 danielle.pfifferling@finnegan.com 8 9 Jeffrey S. Gritton 10 BAKER BOTTS LLP 11 98 San Jacinto Blvd., Suite 1500 12 Austin, TX 78701-4078 13 Tel: (512) 322-2624 14 Jeff.Gritton@bakerbotts.com 15 16 17 18 19 20 21 22 23 24 25</p> <p>5</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 ON BEHALF OF PETITIONER: 3 Amy E. LaValle, Esq. 4 WICK PHILLIPS GOULD & MARTIN, LLP 5 3131 McKinney Avenue, Suite 100 6 Dallas, TX 75204 7 (214) 692-6200 8 amy.lavalle@wickphillips.com 9 10 ON BEHALF OF PATENT OWNER: 11 Ricardo Rodriguez, Esq. 12 COOLEY LLP 13 3175 Hanover Street 14 Palo Alto, CA 94304-1130 15 Tel: (650) 843-5046 16 rr@cooley.com 17 18 Lauren L. Stevens, Ph.D. 19 HORIZON PHARMA USA, INC. 20 150 S. Saunders Road 21 Lake Forest, Illinois 60045 22 Tel: (224) 383-3265 23 lstevens@horizonpharma.com 24 25</p> <p>4</p>	<p style="text-align: right;">Page 5</p> <p>1 DAVID A. JOHNSON, M.D., 2 called a witness, having been duly 3 sworn, was examined and testified as 4 follows: 5 EXAMINATION 6 BY MS. LaVALLE: 7 Q. Hi, Dr. Johnson. 8 A. Good morning. 9 Q. As I stated a minute ago, my name is 10 Amy LaValle and I'm an attorney for the 11 petitioner Coalition for Affordable Drugs. 12 Could you please state your full name 13 for the record. 14 A. Sure. David Alan Johnson. 15 Q. And could you state your current home 16 address? 17 A. 7464 North Shore Road, Norfolk, 18 Virginia 23505. 19 Q. Have you ever been deposed? 20 A. Yes. 21 Q. How many times? 22 A. I don't know that I have the number 23 off the top of my head, but several. 24 Q. Are you experiencing any medical 25 issues today that may affect your testimony?</p> <p>6</p>

<p style="text-align: right;">Page 6</p> <p>1 A. No.</p> <p>2 Q. Do you have any legal issues that</p> <p>3 would prohibit you from providing answers</p> <p>4 today?</p> <p>5 A. No.</p> <p>6 Q. Are you doing any consulting</p> <p>7 work -- other than this, for this proceeding,</p> <p>8 are you doing any consulting work for the</p> <p>9 patent owners?</p> <p>10 A. Yes.</p> <p>11 Q. Could you tell me about that?</p> <p>12 A. It's in the -- involved with</p> <p>13 litigation.</p> <p>14 Q. So other legal expert work?</p> <p>15 A. Correct.</p> <p>16 Q. For other legal proceedings?</p> <p>17 A. Correct.</p> <p>18 Q. And that is for POZEN?</p> <p>19 A. Correct.</p> <p>20 Q. And for Horizon Pharma as well?</p> <p>21 A. Correct.</p> <p>22 Q. Other than legal work, are you doing</p> <p>23 any consulting work for the patent owners?</p> <p>24 A. No.</p> <p>25 Q. Have you ever done any consulting</p> <p>7</p>	<p style="text-align: right;">Page 8</p> <p>1 BY MS. LaVALLE:</p> <p>2 Q. Dr. Johnson, I did see on page, I</p> <p>3 think, 98, if you could turn to page 98 -- or</p> <p>4 at the bottom of 97 starts a listing of some</p> <p>5 research activities that you conducted for</p> <p>6 AstraZeneca.</p> <p>7 Is this what you were referring to a</p> <p>8 few minutes ago?</p> <p>9 A. In part, yes.</p> <p>10 Q. Can you explain what you did for</p> <p>11 AstraZeneca in the study at the bottom of page</p> <p>12 97?</p> <p>13 A. This was a -- as I recall, have not</p> <p>14 reviewed this protocol for quite some time.</p> <p>15 This was a pharmaceutical investigative study.</p> <p>16 I was the primary investigator at my site, not</p> <p>17 in the study, so we were participating in a</p> <p>18 pharmaceutical clinical trial at which I was</p> <p>19 the primary investigator at my site, not for</p> <p>20 the entire trial.</p> <p>21 Q. Can you explain what your</p> <p>22 responsibilities were?</p> <p>23 A. Well, the primary investigator at any</p> <p>24 site, as well as the associates, to maintain</p> <p>25 clinical conduct in accordance with the</p> <p>9</p>
<p style="text-align: right;">Page 7</p> <p>1 work for the patent owners in the past?</p> <p>2 A. No.</p> <p>3 Q. Have you done any consulting work in</p> <p>4 the past for AstraZeneca?</p> <p>5 A. Yes.</p> <p>6 Q. What type of consulting work have you</p> <p>7 done for AstraZeneca?</p> <p>8 A. Typical consulting work and advice on</p> <p>9 clinical trials and participation in scientific</p> <p>10 development.</p> <p>11 Q. Do you recall which drugs?</p> <p>12 A. I've been involved in Omeprazole and</p> <p>13 with -- as well it was -- at that time was</p> <p>14 Merck and then AstraMerck, and then</p> <p>15 AstraZeneca, as well as esomeprazole and</p> <p>16 involved in some of the other developmental</p> <p>17 drugs which haven't come to market.</p> <p>18 MS. LaVALLE: I was provided a copy</p> <p>19 of your CV a couple of days ago, and I'd</p> <p>20 like to mark that as an exhibit in this</p> <p>21 deposition. It will be Exhibit 1. I'll</p> <p>22 hand you a copy.</p> <p>23 THE WITNESS: Oh, okay.</p> <p>24 (Johnson Exhibit No. 1 was marked for</p> <p>25 identification.)</p> <p>8</p>	<p style="text-align: right;">Page 9</p> <p>1 clinical trial design, ensure patient safety</p> <p>2 and ensure reporting as outlined in the</p> <p>3 protocol.</p> <p>4 Q. And at the top of the next page</p> <p>5 listed as .8.11, there's another study there</p> <p>6 where it states you were the primary</p> <p>7 investigator. Is that a similar type of study?</p> <p>8 A. Well, similar type of study as a</p> <p>9 primary investigator at the site in a</p> <p>10 pharmaceutical-sponsored trial.</p> <p>11 Q. So when you say</p> <p>12 "pharmaceutical-sponsored," do you mean</p> <p>13 AstraZeneca sponsored and paid for this trial?</p> <p>14 A. They were as listed there, yes.</p> <p>15 Q. And were you compensated for your</p> <p>16 work?</p> <p>17 A. No.</p> <p>18 Q. Do you recall the dates of these</p> <p>19 trials?</p> <p>20 A. I do not. Sorry.</p> <p>21 Q. Do you recall what you were doing at</p> <p>22 the time, where you were employed?</p> <p>23 A. I was employed with my same group. I</p> <p>24 have been there since 1989.</p> <p>25 Q. Okay. Are you also employed as a</p> <p>10</p>

<p style="text-align: right;">Page 10</p> <p>1 professor?</p> <p>2 A. Well, I'm employed by my division.</p> <p>3 I'm appointed as a professor. I'm not paid for</p> <p>4 my role at the medical school. I'm the</p> <p>5 division director but I'm not directly paid for</p> <p>6 that.</p> <p>7 Q. Okay. Your group that you're</p> <p>8 referring to where you are employed is the</p> <p>9 Gastrointestinal and Liver Disease Specialists</p> <p>10 of Tidewater?</p> <p>11 A. Correct.</p> <p>12 Q. Prior to this proceeding, have you</p> <p>13 ever served as an expert witness in a</p> <p>14 proceeding in which you provided an expert</p> <p>15 report or declaration?</p> <p>16 A. Yes.</p> <p>17 Q. Which proceeding was that?</p> <p>18 A. A number of proceedings. I -- off</p> <p>19 the top of my head, I can't recall the</p> <p>20 specifics, but I've been involved in a number</p> <p>21 of different proceedings.</p> <p>22 Q. Were they patent cases?</p> <p>23 A. Some of which, yes.</p> <p>24 Q. Have you ever testified at a</p> <p>25 deposition or trial in a patent case?</p>	<p style="text-align: right;">Page 12</p> <p>1 don't understand the -- don't participate in</p> <p>2 direct patent application and the proceedings</p> <p>3 that I have been involved in have been in</p> <p>4 legal. And beyond that, no.</p> <p>5 MS. LaVALLE: Okay. I'm going to</p> <p>6 hand you a copy of the patent that is at</p> <p>7 issue in this proceeding. It's</p> <p>8 U.S. Patent 8,945,621. We will mark it</p> <p>9 as Exhibit 2 in this deposition.</p> <p>10 (XX Exhibit No. 2 was marked for</p> <p>11 identification.)</p> <p>12 BY MS. LaVALLE:</p> <p>13 Q. Have you seen this patent before?</p> <p>14 A. I have.</p> <p>15 Q. Can you confirm that this is the</p> <p>16 patent that is at issue in this proceeding?</p> <p>17 A. It is.</p> <p>18 Q. On the first page, in the top</p> <p>19 left-hand corner, near the top left-hand</p> <p>20 corner, there's a list of the named inventors.</p> <p>21 Can you review that list?</p> <p>22 A. Yes.</p> <p>23 Q. Are you familiar with any of these</p> <p>24 names?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 A. I've testified at deposition, never</p> <p>2 at the trial.</p> <p>3 Q. In a patent case?</p> <p>4 A. Yes.</p> <p>5 Q. Just once before?</p> <p>6 A. Some of these get muddled into a</p> <p>7 continuation of different iterations so I don't</p> <p>8 recall if it was with one product or whether or</p> <p>9 not it was several iterations in the same</p> <p>10 litigation, but several depositions.</p> <p>11 Q. Did it involve the product at issue</p> <p>12 in this case?</p> <p>13 A. No.</p> <p>14 Q. Do you have any patents of your own?</p> <p>15 A. Do not.</p> <p>16 Q. Do you have any experience in the</p> <p>17 patent process and applying for patents?</p> <p>18 A. Not directly.</p> <p>19 Q. Do you have any experience that gives</p> <p>20 you a -- do you have any experience with the</p> <p>21 patent process in any work setting other than</p> <p>22 these legal proceedings?</p> <p>23 A. Not directly.</p> <p>24 Q. What do you mean by "not directly"?</p> <p>25 A. Well, I mentioned the first time I</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Which ones?</p> <p>2 A. Mark Sostek, directly -- as far as</p> <p>3 directly familiar with the others by name, but</p> <p>4 not directly knowing.</p> <p>5 Q. Okay. So do you personally know Mark</p> <p>6 Sostek?</p> <p>7 A. I do.</p> <p>8 Q. How do you know him?</p> <p>9 A. Through prior involvement with</p> <p>10 AstraZeneca. He was an employee at</p> <p>11 AstraZeneca.</p> <p>12 Q. Did you work with him when he was an</p> <p>13 employee at --</p> <p>14 A. And I don't understand what you mean</p> <p>15 when -- "work with."</p> <p>16 Q. Could you explain how you came to</p> <p>17 know him?</p> <p>18 A. We were involved in a number of</p> <p>19 clinical trial designs and applications and</p> <p>20 Mark Sostek was one of the physicians at</p> <p>21 AstraZeneca, so I had met him in --</p> <p>22 periodically at different meetings. Don't</p> <p>23 recall specifically working with him, but the</p> <p>24 best of my knowledge.</p> <p>25 Q. Do you recall him being involved in</p>

<p style="text-align: right;">Page 14</p> <p>1 the clinical trials that you were involved in?</p> <p>2 A. Not off the top of my head. Maybe --</p> <p>3 sometimes investigators get listed in the</p> <p>4 lineage, but I don't recall that, best of my</p> <p>5 knowledge.</p> <p>6 Q. Other than that interaction through</p> <p>7 your consulting work for AstraZeneca, do you</p> <p>8 have any other interactions with Dr. Sostek?</p> <p>9 A. No.</p> <p>10 Q. And the other named inventors, have</p> <p>11 you ever met any of them personally?</p> <p>12 A. No.</p> <p>13 Q. Have you ever heard of them?</p> <p>14 A. Not beyond the context of this patent</p> <p>15 review.</p> <p>16 Q. When is the last time you</p> <p>17 communicated with Dr. Sostek?</p> <p>18 A. It has to be several years. I can't</p> <p>19 recall specifically.</p> <p>20 Q. You never communicated with him about</p> <p>21 this proceeding?</p> <p>22 A. No.</p> <p>23 Q. Have you communicated with anyone</p> <p>24 about this proceeding other than attorneys?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 16</p> <p>1 with my CV, but that was submitted.</p> <p>2 Q. Could you confirm that the document</p> <p>3 that we marked earlier as Exhibit 1 is your CV?</p> <p>4 A. Yes.</p> <p>5 Q. Is that the document that you are</p> <p>6 discussing there in paragraph 4?</p> <p>7 A. Yes.</p> <p>8 Q. Your declaration at paragraph 2 says</p> <p>9 that you have been retained as an expert</p> <p>10 opinion witness on behalf of patent owners</p> <p>11 POZEN, Inc. and Horizon Pharma, Inc.</p> <p>12 Could you explain to me how that</p> <p>13 engagement came to be? For example, could you</p> <p>14 tell me who hired you, who called you?</p> <p>15 MR. RODRIGUEZ: Let me just caution</p> <p>16 you not to reveal any actual</p> <p>17 communications other than general stuff</p> <p>18 about the engagement.</p> <p>19 A. Sure. And the honest answer is I</p> <p>20 don't recall how the communication developed.</p> <p>21 Q. Were you contacted by attorneys?</p> <p>22 A. Yes.</p> <p>23 Q. Did you ever speak with anyone other</p> <p>24 than attorneys for POZEN and Horizon?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 15</p> <p>1 MS. LaVALLE: I'm now handing you a</p> <p>2 copy of your declaration that you</p> <p>3 prepared for this proceeding. We will</p> <p>4 mark this document as Exhibit 3.</p> <p>5 (XX Exhibit No. 3 was marked for</p> <p>6 identification.)</p> <p>7 BY MS. LaVALLE:</p> <p>8 Q. Can you confirm that this is your</p> <p>9 declaration, Dr. Johnson?</p> <p>10 A. Yes.</p> <p>11 Q. And if you could turn to the last</p> <p>12 page, can you confirm that that is your</p> <p>13 signature?</p> <p>14 A. Yes.</p> <p>15 Q. Could you turn to paragraph 4.</p> <p>16 That's page 1 of your declaration. The last</p> <p>17 sentence there states that "A full description</p> <p>18 of my background and qualifications is set</p> <p>19 forth in my curriculum vitae attached hereto."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Did you attach your curriculum vitae</p> <p>23 to this document?</p> <p>24 A. I presume when it was submitted. I</p> <p>25 don't know the process of what was submitted</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Did you communicate by email or in</p> <p>2 any other manner with anyone other than</p> <p>3 attorneys for POZEN and Horizon?</p> <p>4 A. No.</p> <p>5 Q. Do you recall when you were engaged?</p> <p>6 A. I do not.</p> <p>7 Q. Approximately how long ago?</p> <p>8 A. Again, as stated, I don't -- I don't</p> <p>9 recall.</p> <p>10 Q. Less than a year?</p> <p>11 A. In the last -- whatever the time of</p> <p>12 the proceedings began. I don't remember the</p> <p>13 scope of the exact date.</p> <p>14 Q. Did you write this declaration</p> <p>15 yourself?</p> <p>16 A. No.</p> <p>17 Q. Who prepared the declaration?</p> <p>18 A. It was prepared in concert with</p> <p>19 counsel.</p> <p>20 Q. When you say "in concert with</p> <p>21 counsel," do you mean you prepared it in</p> <p>22 concert with counsel?</p> <p>23 A. Yes.</p> <p>24 Q. Did anyone other than the attorneys</p> <p>25 assist you in preparing the declaration?</p>

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