Page 247

### UNITED STATES PATENT AND TRADEMARK OFFICE

PAR PHARMACEUTICAL,

INC., WOCKHARDT BIO AG

and AMNEAL

PHARMACEUTICALS LLC,

Petitioners,

vs.

JAZZ PHARMACEUTICALS,

INC.,

Patent Owner.

# CONTINUED DEPOSITION UNDER ORAL EXAMINATION

0 F

BRYAN BERGERON, MD, FACMI

January 22, 2016

New York, New York

REPORTED BY: DANA N. SREBRENICK, CRR CLR



2 (Pages 248 to 251)

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	Page 248		Page 250
1		1	APPEARANCES (continued)
2		2	
3		3	JONES DAY
4		4	BY: JOHN V. BIERNACKI, ESQ.
5	Continued Transcript of the	5	North Point
6	deposition of BRYAN BERGERON, MD,	6	901 Lakeside Avenue
7	FACMI, called for Oral Examination in	7	Cleveland, Ohio 44114-1190
8	the above-captioned matter, said	8	216. 586. 7747
9	deposition taken pursuant to United	9	jvbiernacki@jonesday.com
10	States Patent and Trademark Office	10	Counsel for the Patent Owner,
11	rules and regulations, by and before	11	Jazz Pharmaceuticals
12	DANA N. SREBRENICK, a	12	0a22 Filatillaceuticats
13	, , , , , , , , , , , , , , , , , , ,	13	
	Federally-Approved Certified Realtime	14	OLLINA FMANUEL LIDOLILADE 0
14	Reporter, a New Jersey Certified Court		QUINN EMANUEL URQUHART &
15	Reporter, a Certified Livenote	15	SULLIVAN LLP
16	Reporter, and a Notary Public for the	16	BY: FRANK CALVOSA, ESQ.
17	State of New York, at the offices of	17	EVANGELINE SHIH, ESQ.
18	QUINN EMANUEL URQUHART & SULLIVAN LLP,	18	51 Madison Avenue, 52nd Floor
19	51 Madison Avenue, New York, New York	19	New York, New York 10010
20	10010, commencing at 9:30 a.m.	20	212. 849. 7569
21		21	Evangelineshih@quinnemanuel.com
22		22	frankcalvosa@quinnemanuel.com
23		23	Counsel for the Patent Owner,
24		24	Jazz Pharmaceuticals, Inc.
25		25	
	Page 249		Page 251
1	APPEARANCES	1	
2		2	
3	ARENT FOX	3	BRYAN BERGERON, MD, FACMI,
4	BY: RICHARD J. BERMAN, ESQ.	4	27 Stearns Road, Brookline,
5	1717 K Street, NW	5	Massachusetts 02406, after having been
6	Washington, DC 20036-5342	6	duly sworn, was examined and testified
7	202. 857. 6000	7	as follows:
8	Richard.berman@arentfox.com	8	
9	Counsel for the Petitioner,	9	CONTINUED EXAMINATION BY MR. BERMAN:
10	Par Pharmaceutical	10	
11	Tar Tharmacoucrear	11	<b>Q.</b> Good morning, Dr. Bergeron.
12	MADDOX EDWARDS, PLLC	12	A. Good morning.
13	BY: MATTHEW C. RUEDY, ESQ.	13	Q. Let's pick up where we left off
14	1900 K Street NW - Suite 725	14	yesterday in your report, Exhibit 2047 for
15	Washington, DC 20006	15	the '059 IPR. Let's go to page 20 at
16	202. 830. 0779		
17	mruedy@meiplaw.com	16 17	paragraph 46. Are you there?
18	Counsel for the Petitioner,		A. I'm there, yes, yes.
19	Amneal Pharmacuetical	18	<b>Q.</b> The first sentence says, "Based
20	AIIIIIGAT FITATIIIAGUGGTGAT	19	on the ACA disclosures, it is my opinion
21		20	that a POSA would have understood that
		21	generating data for any possible
22		22	investigations and prosecutions is not the
23 24		23	same as generating periodic reports." Do
/4		24	you see that?
25		25	A. I do.



3 (Pages 252 to 255)

Page 254

### Page 252

### BRYAN BERGERON, M.D.

- **Q.** And that's because the information provided in such a manner is done so upon request; is that right?
  - **A.** That's right.

- Q. Going on to towards the end of that paragraph, the last sentence, "It is my opinion that the ACA materials only disclose generating retrospective ad hoc reports to aid in diversion investigations once those investigations have already been initiated. The ACA materials were not disclosed, taught or suggested the claimed prospective periodic reports that will aid the central pharmacy in evaluating potential diversion patterns."
  - A. I do, yes.
- **Q.** Let's take that second sentence first. When you say "the claimed prospective periodic reports," what do you mean?
- **A.** I think I'm referring to the claimed reports in the patent, in other words, the claims.

## BRYAN BERGERON, M. D.

week after that.

- Q. And so do you --
- **A.** So that's going into the future.
- **Q.** So when you use the term "prospective," you're just meaning sometime in the future?

MR. CALVOSA: Objection.

Mischaracterizes.

A. I mean that's part of a periodic report. So a — a periodic report is what is claimed here. So, for example, a weekly report is a report given every week, not every — not once a week and it skips three weeks, another week and two weeks and another week. But it's weekly, so it's prospective.

I can expect that at a set interval, at regular frequencies or intervals, as opposed to intermittently or upon request. So that regular frequency in that case would be a week, so that's looking — I can expect a weekly report six months from now in the system.

If I'm established -- if I have

### Page 253

### BRYAN BERGERON, M.D.

**Q.** Does the word "prospective" appear in the claims?

**A.** I don't recall. I can check. assume you probably checked.

**Q.** I submit to you it does not. It does not appear in the claim.

A. I'll accept that.

**Q.** Since it does not appear in the claims, what's your basis that the claims are limited to prospective periodic reports?

A. I'm not saying it's limited, first of all. And I'm talking about periodic reports, and so by nature, reports — a periodic report I talked about earlier is something that occurs — the exact wording here — at regular frequencies or intervals as opposed to intermittently or upon request.

So, for example, a weekly report would be weekly. So it's a preset frequency. So if I expect a weekly report, I would see it next week, the following week, the week after that, the

### Page 255

### BRYAN BERGERON, M.D.

a weekly report, I can look ahead a month and know there will be a weekly report there on the week. That's the meaning in the context of "prospective."

### BY MR. BERMAN:

- **Q.** When you're using the term "prospective," you mean prospective in time?
  - A. Yes.
- **Q.** Okay. And in your opinion the claimed prospective reports aid the central pharmacy in evaluating potential diversion patterns, correct?
  - A. Yes.
- **Q.** So what are some examples of prospective reports, according to the patent?
- **A.** So if you look at figure 13-A in the patent, these reports, for example, on the figure 13-A, the first report, the first activity report, RX by zip, new and total, so the first entry has associated with it weekly, monthly, and quarterly reports. And the title of that column in



4 (Pages 256 to 259)

### Page 256

BRYAN BERGERON, M.D.
the right is "The Report Frequency," so I
would expect that — the RX by zip, new
and total weekly, monthly and quarterly
reports.

**Q.** Is a report tracking prescriptions by physician a prospective report in your opinion?

**A.** Can you point to a specific spot? Are you pointing to the second entry, what are you asking me?

**Q.** I'm not pointing to the second entry. I'm just asking if that would be a prospective report in your opinion?

A. It would depend.

Q. On what?

**A.** Is it a weekly report?

**Q.** I'm asking whether a report tracking prescriptions by physician would be a prospective report in your opinion?

MR. CALVOSA: Objection to form.

**A.** I would need to know more. I don't have enough information. It depends, so I cannot make a decision based on what you've told me.

### Page 258

### BRYAN BERGERON, M.D.

**A.** Well, I mean, I understand 13-A to illustrate reports at a -- I'm sorry -- periodic reports, and a period of these reports would be monthly.

BY MR. BERMAN:

**Q.** So is that prospective in your opinion?

**A.** The reporting is prospective.

**Q.** Okay. And do the call center reports aid the central pharmacy in evaluating potential diversion patterns in your opinion?

A. It depends.

**Q.** It depends on what?

**A.** It depends on the situation. I haven't — I haven't studied or opined on the specific entries in this table and how they apply to potential use by third-parties.

Q. So you don't have an opinion as to whether all the activity reports in figure 13-A aid the central pharmacy in evaluating potential diversion patterns?

MR. CALVOSA: Objection.

### Page 257

### BRYAN BERGERON, M.D.

### BY MR. BERMAN:

**Q.** So let's look at some of these other reports on 13-A. One area of reports listed here is call center. Do you see that?

**A.** Call center, yes, middle of the 13-A.

Q. Yeah. And you see that there is several entries there under the call center, number of calls received, number of calls initiated, number of calls answered in 30 seconds, et cetera, percentage of calls answered in 30 seconds, number of abandoned calls, percentage of abandoned calls and average call length. Do you see all of those?

A. I see those, ves.

**Q.** And each of those is associated in figure 13-A with a monthly report, correct?

A. I see that, yes.

**Q.** So would that be a prospective report in your opinion?

MR. CALVOSA: Objection. Form.

Page 259

### BRYAN BERGERON, M.D.

Mischaracterizes.

**A.** What I said is I haven't studied each individual entry in terms of its potential for that use. It's not excluding some of this for that use. BY MR. BERMAN:

**Q.** So not all of the activity reports on 13-A would aid the central pharmacy in evaluating potential diversion patterns?

**A.** Again, I haven't performed that analysis.

Q. You have no opinion on that? MR. CALVOSA: Objection.

Mischaracterizes.

A. Well, my opinion is that I haven't done that analysis. My opinion on this use — I offer this 13-A in response to your question about the nature of these periodic reports, prospective periodic reports.

That's -- that's how I'm offering this. I have not done an analysis of each entry in this report for



### Page 260

# BRYAN BERGERON, M.D. a particular use.

BY MR. BERMAN:

**Q.** Turning to the sentence on retrospective reports, what do you mean by "retrospective reports" in your opinion on paragraph 46?

**A.** I'm sorry, can you point me to which page?

**Q.** Sure. It's on page 21, last sentence — I'm sorry, second to last sentence. "It is my opinion that the ACA materials only disclose generating retrospective ad hoc reports." Do you see that?

A. I do.

**Q.** Okay. What do you mean by "retrospective reports" in that instance?

A. Well, first of all, the ad hoc reports are generated or event-driven, so they are — there's a need for a report and then the report is created; and so in contrast to the prospective reporting, which occurs every week or every month, whatever the periodicity is.

### Page 262

### BRYAN BERGERON, M.D.

that being retrospective.

So I'm trying to understand what's the difference between the data that's in a retrospective report in your opinion and a data that's in a prospective report?

A. I think you're mixing up two concepts that we've been talking about, at least I've been talking about. Right now you're talking about the data and we were talking — I understood we were talking about — this conversation about — we first start off with prospective periodic reports, and that's the frequency of the reports, so I can look forward — if it's a weekly report, to a report being provided next week.

I'm not talking about data in the report. I'm talking about the report itself being provided. If it's a weekly report, every week.

So an ad hoc report occurs at one point in time. There's no suggestion in my mind that it's going to occur again.

### Page 261

### BRYAN BERGERON, M.D.

That because the report is ad hoc, and generated as needed, it necessarily includes information or data from things that occurred up to that current — up to that point in time and it's retrospective.

Q. Going back to figure 13-A just so I can clarify what you mean there. In the reports, for example, the call center reports that are reported monthly, doesn't that include data information or data from things that occurred up to that point in time?

**A.** At what point in time?

**Q.** At the point in time the report is generated.

A. I would expect so, yes.

Q. So you said — in differentiating between ad hoc and prospective reporting, you said that the report, when the report is ad hoc, it necessarily includes information or data from things that occurred up to that current point in time, and you labeled

### Page 263

### BRYAN BERGERON, M.D.

It can never occur again ever. So it cannot be prospective. It's ad hoc. So it — by necessity, that report — I'm not talking about the data in the report, the data in the report has to occur — it can't have future data in it. It has to have the data up to that point in time.

Or if it's a periodic report, say a weekly report or a monthly, I would expect next month to have another report and the next month to have another report and the next month to have another report, so the reporting is prospective.

At each one of those report dates, it would then contain data of course that previously occurred, because you can't have reports on — maybe someone could — I wouldn't expect data to be from the future in any of the reports.

So that's what I'm differentiating in the report itself. I'm not looking at -- analyzing the data in the report, characterizing the data in the report as by necessity being prior to the



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