

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN LABORATORIES LIMITED,

Petitioner,

v.

AVENTIS PHARMA, S.A.,

Patent Owner.

Patent No. 8,927,592

DECLARATION OF MR. ROBERT MCSORLEY

MYLAN - EXHIBIT 1044

TABLE OF CONTENTS

I. Qualifications	1
II. Assignment.....	2
III. Summary of Opinions	4
IV. The Parties	6
V. Legal Proceedings Concerning the ‘592 Patent	7
VI. U.S. Patents Relating to Jevtana [®] and Taxotere [®]	8
VII. The Relevant Market	12
VIII. Assessment of Commercial Success.....	19
IX. Analysis of the Tate Declaration and My Opinions	24
X. Compensation and Signature.....	69

I. Qualifications

1. I am a Director with Ocean Tomo, LLC, an Intellectual Property (“IP”) consulting firm providing financial products and services including IP expert services, valuation, research, investments and transactions. Ocean Tomo assists clients — individuals, corporations, law firms, and investors — in assessing the value of IP and other intangible assets.

2. I am a CPA with more than 24 years of experience addressing the economic and financial issues concerning commercial and IP litigation. I have been involved with the financial and economic aspects of patent infringement disputes since 1992, and I have studied the relevant legal opinions in this area. During the past 11 years, I have spent considerable time addressing these issues in the context of pharmaceutical patent infringement matters.

3. I have been qualified as a financial/economic expert and testified before several Federal District Courts and the American Arbitration Association as an expert witness. Federal District Courts have accepted my opinions and have indicated that my testimony, as it relates to the economic and financial aspects of patent infringement disputes, is credible.

4. I obtained my Bachelor of Science degree in Accounting from The Pennsylvania State University in 1989. I obtained my JD degree from The

University of Pittsburgh School of Law in 1996. A listing of my prior testimony is provided in my C.V., attached as **Attachment 1**.

II. Assignment

5. I have been asked by counsel for Mylan Laboratories Limited (“Mylan”) to provide expert testimony in this matter concerning U.S. Patent Nos. 8,927,592 (“the ‘592 patent”). I have also been asked to review and assess the December 23, 2016, Expert Declaration of Michael E. Tate (“Mr. Tate”; “the Tate Declaration”) submitted on behalf of Aventis Pharma, S.A. (“Aventis”). I have also been asked to address certain secondary considerations of non-obviousness, including the alleged commercial success of Jevtana[®].

6. In addition, I have been asked to consider whether there is a nexus between the claimed merits of the ‘592 patent and Jevtana[®] sales. In other words, I have been asked to consider whether Jevtana[®] sales are due to the subject matter of the asserted claims of the ‘592 patent.

7. I have gained an understanding of the relevant facts based on my experience and analysis of the information made available to me, including, but not limited to the following:

- Legal filings;
- Documents produced by Aventis;

- Publicly available information relating to the parties, the U.S. drug market, and the relevant drug products;
- Monthly sales and prescription data for Jevtana[®] and other drugs used to treat prostate cancer;
- The Tate Declaration, dated December 23, 2016;
- Records considered by Mr. Tate;
- The Deposition of Mr. Tate, dated March 6, 2017;
- The Declaration of Dr. Rahul Seth, dated March 15, 2016 (“the Seth Declaration”);
- The Deposition of Dr. Seth dated December 9, 2016;
- The Declaration of Alton Sartor, M.D., dated December 22, 2016 (“the Sartor Declaration”);
- The Deposition of Dr. Sartor, dated February 13, 2017;
- The ‘592 patent; and
- Other U.S. patents.

8. A detailed listing of documents considered is included in the footnotes hereto and/or the summary provided in **Attachment 2**. **Attachment 3** is a Timeline of Events relating to this matter. The opinions expressed in this Declaration are based on my current understanding of the facts, my review of the records produced by the parties, and other public information.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.