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Transcript of **Conference Call**

Date: June 17, 2016

Case: AstraZeneca; Mylan; Wockhardt; Sun Pharmaceutical Industries Ltd., In Re (PTAB)

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AstraZeneca Exhibit 2010
Sun v. AstraZeneca

1	1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 ----- 3 BEFORE THE PATENT TRIAL AND APPEAL BOARD 4 ----- 5 IPR2016-01104 6 Administrative Patent Judges Rama Elluru 7 and Michael Tierney 8 ----- 9 Telephonic Conference 10 Friday, June 17, 2016 11 2:23 p.m. 12 Job No.: 115100 13 Pages: 1 - 17 14 Reported by: 15 Sandra Bunch VanderPol, RMR, CRR, CSR #3032 16 17 18 19 20 21 22	3	1 PROCEEDINGS 2 JUDGE ELLURU: All right. So we should 3 still have counsel for Wockhardt and AstraZeneca on 4 the line; is that correct? 5 MR. WEINGARTEN: AstraZeneca is on the line. 6 MR. GALLAGHER: Wockhardt is on the line. 7 MR. PARK: Your Honor, this is Sam Park on 8 behalf of Sun. Would you like us to drop off? I 9 didn't realize this was -- 10 JUDGE ELLURU: Yes, please. 11 MR. BALL: Okay. Thank you. 12 JUDGE ELLURU: Sorry. 13 MR. HARTMANN: Actually, I'm a little 14 confused. I thought that the timing issue was -- 15 which timing issue are we talking about? 16 JUDGE ELLURU: The filing of a motion for a 17 joinder date. 18 MR. HARTMANN: Whether it's June 1st or 19 whether it's June 3rd? 20 JUDGE ELLURU: Correct. 21 UNIDENTIFIED SPEAKER: I think that's a Sun 22 issue. That's not a Wockhardt issue, your Honor.
2	1 Telephonic Conference with the Honorable 2 RAMA ELLURU and MICHAEL TIERNEY, Administrative Patent 3 Judges, held pursuant to agreement, before Sandra 4 Bunch VanderPol, Certified Shorthand Reporter No. 3032 5 of the State of California. 6 7 APPEARANCES 8 ON BEHALF OF ASTRAZENECA AB: 9 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP 10 ANTHONY HARTMANN, ESQUIRE 11 DAVID WEINGARTEN, ESQUIRE 12 -and- 13 MCCARTER & ENGLISH LLP 14 ERIC E. GRONDAHL, ESQUIRE 15 16 On behalf of SUN PHARMACEUTICAL INDUSTRIES, LTD.: 17 WINSTON & STRAWN LLP 18 SAMUEL S. PARK, ESQUIRE 19 20 21 22	4	1 JUDGE ELLURU: Well, thank you for bringing 2 that to my attention. So Wockhardt and Mylan can drop 3 off. 4 Now we have counsel for the parties in 5 IPR2016-01104; is that correct? 6 MR. HARTMANN: Yes. That's correct, your 7 Honor. 8 JUDGE ELLURU: And so Mr. Park and 9 Mr. Hartmann? 10 UNIDENTIFIED SPEAKER: Yes, your Honor. 11 MR. WEINGARTEN: Your Honor, David 12 Weingarten is still on the line for AstraZeneca; Eric 13 Grondahl as well. 14 JUDGE ELLURU: And we still have a court 15 reporter on the line? 16 THE REPORTER: Yes, we do. 17 JUDGE ELLURU: Could you please indicate on 18 the transcript that now we are on the teleconference 19 for IPR2016-01104. 20 THE REPORTER: Would you like a separate 21 transcript for this or do you want them bound in one? 22 JUDGE ELLURU: That would be great if we

<p>5</p> <p>1 could have a separate transcript. 2 THE REPORTER: I would be happy to do that. 3 Thank you. 4 JUDGE ELLURU: Thank you. 5 And if counsel from AstraZeneca could file 6 that in the relevant case, that would be great. 7 MR. WEINGARTEN: We will, your Honor. 8 JUDGE ELLURU: All right. So starting with 9 petitioner, Mr. Park. Could you please explain the 10 dispute here. 11 Mr. Park? He was here a minute ago. 12 MR. HARTMANN: I though he stayed on. 13 JUDGE ELLURU: Mr. Park? 14 Could one of you please call him and see if 15 we can get him back on the line, please. 16 UNIDENTIFIED SPEAKER: Yes, I could give him 17 a call, your Honor. 18 JUDGE ELLURU: We are going to put you on 19 mute. 20 UNIDENTIFIED SPEAKER: He's calling in now. 21 JUDGE ELLURU: I appreciate that. And I 22 apologize for causing the confusion that I did.</p>	<p>7</p> <p>1 indicating that we had actually made the service on 2 June 2nd. 3 So we believe at the latest the filing and 4 certificate of the actual service of the joinder had 5 occurred on June 2nd, which is a month after the 6 initial decision. 7 The fact that the actual notice of the 8 service was filed on June 3rd, we do not believe that 9 that is the filing date. So we believe that this was 10 just an administrative error that needs to be 11 corrected. We believe -- 12 JUDGE ELLURU: Sorry, Mr. Park. I didn't 13 mean to interrupt you. 14 But if the Certificate of Service was sent 15 out on June 2nd, how come the notice was not filed on 16 the same day? 17 MR. PARK: We think -- well, actually, I'm 18 not completely sure on why that -- the actual notice 19 that -- that the mailing had occurred on June 2nd, 20 that that was not filed on June 2nd as well. 21 But I think, based on our previous 22 practices, we had filed those on days after the actual</p>
<p>6</p> <p>1 Mr. Park? 2 MR. PARK: Good afternoon, your Honor. This 3 is Sam Park on behalf of Amneal and Sun. 4 JUDGE ELLURU: Thank you. Again, I 5 apologize for the confusion. 6 MR. PARK: No problem. 7 JUDGE ELLURU: So we would like to talk 8 about the dispute with AstraZeneca about the state of 9 the filing of the motion for joinder. Could you 10 please speak to that issue? 11 MR. PARK: Sure, your Honor. 12 We had filed the joinder -- the motion for 13 joinder on June 1st, and we filed a Certificate of 14 Service on that date indicating that we had served 15 AstraZeneca on that date as well. 16 What happened was basically an 17 administrative error. The clerk who was supposed to 18 mail the joinder out that night could not do that. So 19 he instead mailed it out on June 2nd. So the 20 following day we realized that the Certificate of 21 Service that did get filed was inaccurate. So we 22 filed a corrected Certificate of Service on June 3rd</p>	<p>8</p> <p>1 mailing, and they were -- the actual filing date was 2 granted on the date of the mailing. So we believe 3 that that particular notice -- 4 JUDGE ELLURU: Well, I suspect in those 5 cases there may not have been a problem with a rule 6 bar, a timing bar. 7 MR. PARK: Your Honor, actually, in those 8 cases we believe that there were supportive 9 circumstances, the actual filing date, when the actual 10 service was perfected, not on the date where the 11 actual notice of that service was filed. 12 So, in other words, because the actual 13 perfection of the notice, the service was on June 2nd, 14 we believe that that is the proper filing date. 15 AstraZeneca in this case has not been in opposition to 16 that issue. 17 JUDGE ELLURU: Mr. Hartmann, can we have 18 your position on that issue now. 19 MR. HARTMANN: Mr. Park has correctly said 20 that we have not taken a position on this issue 21 because we're not too sure of what is the Board's 22 policy regarding not giving a filing date.</p>

<p style="text-align: right;">9</p> <p>1 Based upon our reading of the rules and 2 statements on the website, it's not clear to us 3 whether or not the date of their service filing is the 4 date of -- is the date to which the filing is given, 5 or if it's the actual date of the original filing or 6 the -- in this case, the June 2nd corrected filing. 7 So we are not taking a position per se. We 8 just -- we were letting the Board decide the policy on 9 this issue. 10 JUDGE ELLURU: Well, we do like it when 11 parties come to agreement. And it would be wonderful 12 if that could happen in this case. 13 And I would like to point out that even if 14 our rules require that the notice designates the 15 filing day, which I'm not saying it does, or even 16 assuming that, we do have the discretion to waive our 17 rules. 18 MR. PARK: Your Honor, this is not a case 19 where AstraZeneca did not receive the filings. And 20 they did receive it on June 1st. And that's not the 21 date that we're asking for. We're asking for the date 22 of June 2nd, which was definitely a date that the</p>	<p style="text-align: right;">11</p> <p>1 your Honor, is the prejudice is that in one case the 2 rules state that their motion for joinder is not 3 timely and, therefore, shouldn't be allowed. 4 In the other case, providing the earlier 5 date, it would be -- they would be allowed. Of 6 course, that's ignoring the fact that it's almost two 7 years from filing the complaint. But that's a 8 different issue. 9 MR. PARK: Your Honor, may I respond 10 briefly? 11 JUDGE ELLURU: Actually -- yes, let -- 12 JUDGE TIERNEY: I want to understand, when 13 was service? Was it June 2nd that they served the 14 papers? 15 MR. PARK: This is Sam Park, your Honor. 16 Yes, June 2nd was when we made the service. 17 JUDGE TIERNEY: I want to go to AstraZeneca. 18 Is there any dispute that they actually 19 served the papers on June 2nd? 20 MR. HARTMANN: We only know -- your Honor, 21 this is Mr. Hartmann. We only know the date we 22 received it. I don't know when it actually was sent</p>
<p style="text-align: right;">10</p> <p>1 service was actually made. Just that the actual 2 notice of that corrected Certificate of Service was 3 not filed until June 3rd. 4 JUDGE ELLURU: Mr. Hartmann, is there any 5 prejudice to AstraZeneca if we were select the 6 June 2nd date for the filing of the Motion of Joinder? 7 MR. HARTMANN: That is the timing of one 8 day, I -- I don't -- 9 MR. WEINGARTEN: Your Honor, this is David 10 Weingarten, from Finnegan, on behalf of AstraZeneca. 11 I think the prejudice is that in one -- in 12 one case they would be time barred from being allowed 13 to even join, and they are time barred from being able 14 to file their petition. Basically, they wouldn't be 15 in the IPR -- 16 JUDGE TIERNEY: Explain to me, is there a 17 time bar? Or is it merely a regulatory statement that 18 there's a one day between the -- the rule says you 19 have to file within a month. 20 Does that one day affect what could possibly 21 come out of this? 22 MR. WEINGARTEN: Well, as I was stating,</p>	<p style="text-align: right;">12</p> <p>1 out. 2 JUDGE TIERNEY: Is there any dispute with 3 that? They are saying they served it on June 2nd. Do 4 you have anything to believe that's incorrect? 5 MR. HARTMANN: Without going to the storage 6 where that is, I don't have a basis to dispute it 7 right now. 8 JUDGE TIERNEY: All right. So what I am 9 trying to find out is, is there any dispute as to what 10 they actually did on June 2nd? They had a file -- 11 MR. WEINGARTEN: Your Honor, I think I can 12 answer your question. 13 JUDGE TIERNEY: Please do. 14 MR. WEINGARTEN: We received at 8:20 at 15 night a copy of a petition and the Motion for Joinder 16 from Sun/Amneal on June 2nd. 17 JUDGE TIERNEY: So you did receive papers on 18 June 2nd? 19 MR. WEINGARTEN: We did receive an e-mail 20 that evening, that's correct. 21 JUDGE TIERNEY: So if there is any 22 prejudice, they are given a June 2nd date, given that</p>

<p style="text-align: right;">13</p> <p>1 you were in possession of papers on June 2nd? 2 MR. WEINGARTEN: Your Honor, my point with 3 regard to the prejudice is it's a procedural prejudice 4 in the sense of being able to be in the case or not. 5 I'm not suggesting it's a prejudice not being able to 6 respond. 7 JUDGE TIERNEY: But the procedural prejudice 8 is a regulatory prejudice? Or is there some statutory 9 reason we cannot go forward? 10 MR. WEINGARTEN: I cannot speak to that, 11 your Honor. 12 JUDGE TIERNEY: Any reason why I should not 13 give a June 2nd date? You had the papers in your hand 14 on June 2nd. 15 MR. WEINGARTEN: Just a reading of the 16 rules, your Honor. 17 JUDGE TIERNEY: Thank you. 18 JUDGE ELLURU: Anything else you would like 19 to add? 20 MR. PARK: Your Honor, just two very quick 21 points. First is that in the context of litigation in 22 District Courts, courts have held that if the service</p>	<p style="text-align: right;">15</p> <p>1 MR. PARK: Yes, we are. 2 JUDGE ELLURU: And counsel for patent owner? 3 MR. WEINGARTEN: Yes, sir. Yes, ma'am. 4 JUDGE ELLURU: Again, we would like the 5 transcript of this telephone conference filed as an 6 exhibit in this case, IPR2016-01104. 7 We are going to afford the June 2nd date to 8 the filing date, as the filing date for the Motion for 9 Joinder as well as the Petition. 10 MR. PARK: This is Sam Park. Thank you, 11 your Honor. 12 JUDGE ELLURU: Any questions from 13 AstraZeneca? 14 MR. HARTMANN: This is Mr. Hartmann. No, 15 your Honor. 16 JUDGE ELLURU: Thank you. With that, this 17 call is adjourned. 18 MR. HARTMANN: Thank you. 19 MR. PARK: Thank you. 20 (The proceeding was concluded at 2:38 p.m. 21 Eastern time). 22 --o0o--</p>
<p style="text-align: right;">14</p> <p>1 is actually made on a certain date but the notice of 2 service is given on another date, the actual date that 3 controls is the date when the actual service occurs. 4 So we believe that in terms of 5 interpretation, that that ruling would make more sense 6 to us. We understand that the Board has discretion, 7 and we trust that discretion. 8 That's all, your Honor. 9 JUDGE ELLURU: So I just want to confirm 10 that on the telephone call that counsel from 11 AstraZeneca acknowledged that it received the petition 12 and the Motion for Joinder on June 2nd; is that 13 correct, Mr. Weingarten? 14 MR. WEINGARTEN: That is correct. And we 15 certainly are not indicating we didn't receive that. 16 So we did receive it on the 2nd. 17 JUDGE ELLURU: Thank you. I'm going to put 18 the parties on hold. 19 (Teleconference on hold.) 20 JUDGE ELLURU: Thank you. The panel has 21 returned. 22 Counsel for petitioner present?</p>	<p style="text-align: right;">16</p> <p>1 CERTIFICATE OF REPORTER 2 I, Sandra Bunch VanderPol, Certified 3 Shorthand Reporter No. 3032, in and for the State of 4 California, the officer before whom the proceedings 5 were taken, do hereby certify that the foregoing 6 transcript is a true and accurate record of these 7 proceedings; that said proceedings were taken in 8 Stenotype note by me on the 17th day of June, 2016, 9 commencing at 2:23 p.m. Eastern time and ending at 10 2:38 p.m. Eastern time. 11 I, further certify that present on behalf of 12 ASTRAZENECA AB, were Anthony Hartmann and David 13 Weingarten, of Finnegan, Henderson, Farabow, Garrett & 14 Dunner, LLP and Eric E. Grondahl of McCarter & English 15 LLP; on behalf of SUN PHARMACEUTICAL INDUSTRIES, LTD., 16 was Samuel S. Park, of Winston & Strawn LLP. 17 I, further certify that I am not related to, 18 nor associated with any of the parties or 19 their attorneys, nor do I have any disqualifying 20 interest, personal or financial in the actions 21 within. 22</p>

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