

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

3

4 MYLAN PHARMACEUTICALS INC.,

5 Petitioner,

6 v.

7 ALLERGAN, INC.,

8 Patent Owner.

9 _____/

10

11 Case IPR2016-01127

12 Patent 8,685,930

13 Case IPR2016-01128

14 Patent 8,629,111

15 Case IPR2016-01129

16 Patent 8,642,556

17 Case IPR2016-01130

18 Patent 8,633,162

19 Case IPR2016-01131

20 Patent 8,648,048

21 Case IPR2016-01132

22 Patent 9,248,191

23

24 DEPOSITION OF ANDREW F. CALMAN, M.D., PH.D.

25

WEDNESDAY, JULY 12, 2017

Page 2

1 REPORTED BY: MEGAN F. ALVAREZ, RPR, CSR 12470
 2 JOB LA-133836
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 7
 8 BE IT REMEMBERED that, pursuant to Notice, and
 9 on Wednesday, JULY 12, 2017, commencing at WILSON
 10 SONSINI GOODRICH & ROSATI, One Market Street, Spear
 11 Tower, Suite 3300, San Francisco, California, before me,
 12 Megan F. Alvarez, a Certified Shorthand Reporter,
 13 Registered Professional Reporter, personally appeared
 14 for their deposition
 15 ANDREW F. CALMAN, M.D., PH.D.
 16 _____
 17 called as a witness by Patent Owner, who, having been
 18 first duly sworn, was examined and testified as follows:
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1 I N D E X
 2 INDEX OF EXAMINATIONS
 3 EXAMINATION BY MR. KANE7
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 5 EXAMINATION BY MR. KANE168
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1 EXHIBITS MARKED FOR IDENTIFICATION
 2 No. Description Page
 3 Exhibit 2077 Local Cyclosporine Therapy133
 for Experimental Autoimmune
 4 Uveitis in Rats, Nussenblatt,
 et al., Pages 1559 through
 5 1562, Ophthalmology Archives
 6
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Page 5

1 EXHIBITS PREVIOUSLY MARKED FOR IDENTIFICATION
 2 REFERRED TO IN THIS DEPOSITION
 3
 4 Exhibit Initial Reference
 5 No. Page Line
 6 4216 16
 7 100749 25
 8 1011127 11
 9 103913 25
 10 1058125 13
 11 200849 7
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Page 6

1 A P P E A R A N C E S

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3

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--oOo--

Page 7

1 WEDNESDAY, JULY 12, 2017, 9:08 A.M.

2

3 ANDREW F. CALMAN, M.D., PH.D.,

4 having been first duly sworn, was examined and

5 testified as follows:

6

7 EXAMINATION

8 BY MR. KANE:

9 Q. Good morning. Could you state your name

10 for the record?

11 A. Andrew Frederick Calman.

12 Q. And what's your current business address,

13 Dr. Calman?

14 A. 2480 Mission Street, San Francisco,

15 California 94110.

16 Q. And I believe you've been deposed before,

17 right?

18 A. Yes.

19 Q. How many times?

20 A. About 18.

21 Q. Okay. So you know the general ground

22 rules, then. But before we get started, I'm going

23 to ask you a series of questions, you're going to

24 provide the answers. It will be important to let me

25 finish my question before you start your answer so

Page 8

1 that she can get our both of our comments down. I'm

2 a fast talker as well, so we'll both have to try to

3 watch that a little bit and not try to step on each

4 other. Okay?

5 A. Yes.

6 Q. If I ask you a question that you don't

7 understand, please let me know and I'll to do a

8 better job on that. Okay?

9 A. Okay.

10 Q. It's also important that since we are

11 trying to create a transcript here that you need to

12 answer verbally. Yeses, nos, not nods of the head

13 or shaking of the head or the uh-huhs or huh-uhs,

14 that kind of thing. All right?

15 A. Yes.

16 Q. We'll try to take a break approximately on

17 an hourly basis or so. But if you need a break

18 somewhere in the middle, let us know. We can do

19 that. We just won't -- we'll just ask if there's an

20 outstanding question, that you answer the question

21 before we take a break. All right?

22 A. Yes.

23 Q. Of the 18 times you've been deposed, how

24 many of those related to patent issues?

25 A. Two, to the best of my recollection.

Page 9

1 Q. And can you describe generally what those

2 depositions were?

3 A. Well, there was one in the Markman case,

4 and I believe there's just one -- in the Markman

5 phase of Allergan v. Teva Mylan, et al., for this

6 product. And there was one or two, but I believe

7 it's just one, on the invalidity and noninfringement

8 phase of that same case.

9 Q. So both of your depositions that related

10 to patents were in connection with the district

11 court litigation over Restasis currently pending in

12 Texas?

13 A. Correct.

14 Q. Okay.

15 A. There was another matter, but it was an

16 antitrust matter that had grown out of a patent

17 matter. But I was not involved in the patent phase

18 at all.

19 Q. Okay. And then, in general, in the other

20 16 or so depositions that you've given, what did

21 they generally relate to?

22 A. Injuries and medical malpractice.

23 Q. Okay.

24 A. With a smattering of other things. There

25 was an employment discrimination case.

<p style="text-align: right;">Page 10</p> <p>1 I think that's it.</p> <p>2 Q. Okay.</p> <p>3 A. Off the top of my head.</p> <p>4 Q. The other --</p> <p>5 A. Oh, there was a wrongful death case.</p> <p>6 Q. Okay. The other matter that related --</p> <p>7 the antitrust matter that you mentioned, did that</p> <p>8 relate to a drug?</p> <p>9 A. Yes.</p> <p>10 Q. What kind of drug was that?</p> <p>11 A. An antibiotic eye drop.</p> <p>12 Q. Who were the parties?</p> <p>13 A. Apotex and Allergan.</p> <p>14 Q. And who did you represent in that case?</p> <p>15 A. Well, I was engaged by Allergan -- excuse</p> <p>16 me -- by Apotex.</p> <p>17 Q. Where was that case located, if you</p> <p>18 recall?</p> <p>19 A. I think Delaware. But it never went to</p> <p>20 trial, so I don't know for sure.</p> <p>21 Q. What was the name of the product?</p> <p>22 A. Zymaxid.</p> <p>23 Q. Do you recall the time frame when that</p> <p>24 occurred?</p> <p>25 A. It settled earlier this year.</p>	<p style="text-align: right;">Page 12</p> <p>1 the -- to my knowledge, is part of the U.S. Patent</p> <p>2 and Trademark Office.</p> <p>3 Q. Okay. And you understand you're</p> <p>4 testifying under oath today?</p> <p>5 A. Of course.</p> <p>6 Q. So the testimony today is just as though</p> <p>7 you were in a courtroom giving it in front of a</p> <p>8 judge or jury.</p> <p>9 A. Of course.</p> <p>10 Q. Okay. Any reason you can't give accurate</p> <p>11 or truthful, complete testimony today?</p> <p>12 A. No.</p> <p>13 Q. What did you do to prepare for the</p> <p>14 deposition today?</p> <p>15 A. I reviewed various documents. I met with</p> <p>16 counsel, reviewed -- you know, obviously reviewed my</p> <p>17 declaration and others and prior art.</p> <p>18 Q. When did you meet with counsel?</p> <p>19 A. Yesterday and the day before.</p> <p>20 Q. How long?</p> <p>21 A. About eight hours each day.</p> <p>22 Q. Okay. And who -- who was present at those</p> <p>23 meetings?</p> <p>24 A. Jad Mills. Anna Phillips. I think</p> <p>25 Wendy Devine may have poked her head in for a brief</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. And generally --</p> <p>2 A. You know what? I don't think I was</p> <p>3 deposed for that case, though. I didn't actually</p> <p>4 testify.</p> <p>5 Q. Did you provide a report?</p> <p>6 A. Yeah.</p> <p>7 Q. And, again, just at a high level, what did</p> <p>8 the report relate to?</p> <p>9 A. Well, it's subject to a protective order</p> <p>10 which I believe is still in effect. So what I think</p> <p>11 I can probably safely share is what I've seen in</p> <p>12 public press releases, that it was -- not my term</p> <p>13 but press term -- was a product switching case</p> <p>14 related to this drug.</p> <p>15 Q. Okay. You understand that this deposition</p> <p>16 relates to several -- what are called IPRs pending</p> <p>17 in the patent office?</p> <p>18 A. That's my understanding.</p> <p>19 Q. And what do you understand an IPR to be?</p> <p>20 A. Well, my understanding of inter partes</p> <p>21 review is it's a pathway where parties can challenge</p> <p>22 the validity of patents through -- rather than going</p> <p>23 through the court system, going through what's</p> <p>24 called the PTAB, which I believe stands for Patent</p> <p>25 and Trademark Appeals Board, which is a part of</p>	<p style="text-align: right;">Page 13</p> <p>1 period.</p> <p>2 Q. Anyone else?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Anybody on the phone?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. Okay. Do you recall what documents you</p> <p>7 reviewed?</p> <p>8 A. Well, I'm sure I can't remember every</p> <p>9 single thing. But, in general, I reviewed the</p> <p>10 various declarations in the case, the various -- not</p> <p>11 court, but the various PTAB documents such as</p> <p>12 institution, petition, response, order, and then the</p> <p>13 various prior art references.</p> <p>14 Q. Okay. Okay. Did you talk to anyone other</p> <p>15 than counsel in preparation for your deposition?</p> <p>16 A. No.</p> <p>17 Q. Did you talk to anyone at Mylan in</p> <p>18 preparation for the deposition?</p> <p>19 A. No.</p> <p>20 Q. Have you ever spoken to anyone at Mylan</p> <p>21 about this case?</p> <p>22 A. Not to the best of my recollection.</p> <p>23 Q. Okay. All right. We have -- handing you</p> <p>24 what's been marked previously as Exhibit 1039.</p> <p>25 And do you recognize this document,</p>

<p style="text-align: right;">Page 14</p> <p>1 Dr. Calman?</p> <p>2 A. Yes.</p> <p>3 Q. What is this?</p> <p>4 A. This is my declaration for the six IPR</p> <p>5 cases.</p> <p>6 Q. Okay. And if you turn to page 55, that's</p> <p>7 your electronic signature?</p> <p>8 A. Yes.</p> <p>9 Q. And it's dated June 30th, 2017?</p> <p>10 A. Yes.</p> <p>11 Q. And you understand this same declaration</p> <p>12 was filed in all six of the IPR proceedings?</p> <p>13 A. That is my understanding.</p> <p>14 Q. Okay. When did you begin working on the</p> <p>15 declaration for the IPRs?</p> <p>16 A. It would have been late May or early June,</p> <p>17 to the best of my recollection.</p> <p>18 Q. Okay. Do you recall approximately how</p> <p>19 much time you spent drafting the declaration?</p> <p>20 A. I don't have a precise idea of that. I</p> <p>21 can give you an estimate. It's probably somewhere</p> <p>22 between 20 and 30 hours.</p> <p>23 Q. Okay. Did you draft the declaration</p> <p>24 yourself?</p> <p>25 A. Well, it was a -- it was a collaboration</p>	<p style="text-align: right;">Page 16</p> <p>1 The drafting process generally included</p> <p>2 sending drafts back and forth and changing them.</p> <p>3 BY MR. KANE:</p> <p>4 Q. And did you -- did you originate the first</p> <p>5 draft that was exchanged back and forth, or did</p> <p>6 counsel do the drafting?</p> <p>7 A. I think there were parts of both. Parts</p> <p>8 of it were initially written by me, and parts were</p> <p>9 initially written by counsel, if I recall correctly.</p> <p>10 I don't -- there were a lot of drafts. I don't have</p> <p>11 a precise recollection.</p> <p>12 Q. Okay. Let's take a quick look and hand</p> <p>13 you another exhibit here, Dr. Calman.</p> <p>14 Handing you what's been marked previously</p> <p>15 as Exhibit 42.</p> <p>16 Do you recognize this?</p> <p>17 A. I do.</p> <p>18 Q. What is this?</p> <p>19 A. This is my CV.</p> <p>20 Q. And is this dated June 29, 2017?</p> <p>21 A. Yes.</p> <p>22 Q. Was it accurate as of that date?</p> <p>23 A. Yes.</p> <p>24 Q. Have there been any changes?</p> <p>25 A. Let me look.</p>
<p style="text-align: right;">Page 15</p> <p>1 with counsel.</p> <p>2 Q. And which counsel collaborated?</p> <p>3 A. WSGR.</p> <p>4 Q. Anyone else?</p> <p>5 A. No, not unless -- not that I'm aware of.</p> <p>6 Q. And which counsel at Wilson?</p> <p>7 A. I'm sorry?</p> <p>8 Q. Which counsel at Wilson Sonsini?</p> <p>9 A. Let's see. Jad Mills. Grace Winschel,</p> <p>10 W-I-N-S-C-H-E-L. Anna Phillips. Wendy Devine. I</p> <p>11 think Jacqueline Altman may have been involved.</p> <p>12 And there may have been others involved,</p> <p>13 but those are the ones that I'm aware of.</p> <p>14 Q. And can you describe the drafting process</p> <p>15 generally?</p> <p>16 MR. MILLS: And I'm -- at this point, I'm</p> <p>17 just going to issue an instruction that, on the</p> <p>18 basis of work product and privilege, you should</p> <p>19 disclose in answering the questions posed to you</p> <p>20 today your opinions as well as the bases for your</p> <p>21 opinions, but you should not disclose the contents</p> <p>22 of any confidential communications you may have had</p> <p>23 with counsel.</p> <p>24 THE WITNESS: So let me look at the</p> <p>25 question again.</p>	<p style="text-align: right;">Page 17</p> <p>1 Not to the best of my knowledge.</p> <p>2 Q. And --</p> <p>3 A. Actually, there's one change. Let me look</p> <p>4 at this. And I have changed this on my subsequent</p> <p>5 versions.</p> <p>6 There are two hospitals here where I no</p> <p>7 longer practice in the list of admitting privileges,</p> <p>8 and those are San Francisco General Hospital and</p> <p>9 St. Mary's Hospital.</p> <p>10 Q. Okay. Thank you for that update.</p> <p>11 And when you say "practice," you are a</p> <p>12 practicing ophthalmologist, right?</p> <p>13 A. Correct.</p> <p>14 Q. And in preparing your analysis, you relied</p> <p>15 on lawyers for the legal principles that you were to</p> <p>16 incorporate?</p> <p>17 A. In part.</p> <p>18 Q. And where else did you obtain information</p> <p>19 about the legal principles you were to use?</p> <p>20 A. I have done some background reading over</p> <p>21 the last couple of years.</p> <p>22 Q. In what -- can you explain what kind of</p> <p>23 background reading you've done?</p> <p>24 A. I actually enrolled in a course called</p> <p>25 OmniPrep Patent Course, which I didn't complete, but</p>

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