

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APOTEX INC., APOTEX CORP., APOTEX PHARMACEUTICALS  
HOLDINGS INC., and APOTEX HOLDINGS, INC.,

Petitioners,

v.

OSI PHARMACEUTICALS, INC.,

Patent Owner.

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OSI Pharmaceuticals Inc. 1998 10K

Report for the Fiscal Year Ending: September 30, 1998

Date Filed: December 23, 1998

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Case No.: T.B.D.

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**DECLARATION OF LAURENCE S. LESE, ESQ.**

I Laurence S. Lese, Esq., declare and state as follows:

## I. QUALIFICATIONS

1. I am currently retired, having done so on March 31, 2016. I have 46 years of experience in corporate and securities law, having spent my initial eleven years of legal practice as an attorney-advisor in the Division of Corporation Finance of the Securities and Exchange Commission in Washington, D.C. (“SEC”). My entire professional career has focused on the practice of securities law and concomitantly corporate law.

2. I earned my undergraduate degree from Cornell University in 1967 and my J.D. from Cornell Law School in 1970.

3. I was admitted to practice in 1970, Maryland; 1982, Colorado; and 1983, District of Columbia. I remain in good standing in these Bars, although I am inactive in Colorado. I am a member of the American Bar Association.

4. From March 1997 to March 2016, I was a Partner at Duane Morris LLP, where the major focus of my practice was transactional securities law, advising clients regarding compliance with the federal and state securities laws in raising capital, related to both IPOs and secondary offerings, and in complying with the various reporting regimens that a public company must satisfy under State and Federal Laws.

5. Under the Securities Act of 1933, a great deal of my experience involved public offerings, mainly the syndication of limited partnerships in the oil and gas industry, and to a lesser degree private placements under SEC Rule 506 under Regulation D.

6. Under the Securities Exchange Act of 1934 (“Exchange Act”), I have throughout my career rendered advice regarding compliance with the reporting requirements under Section 13, the proxy rules under Section 14, and short-swing profits reporting and compliance under Section 16.

7. I have counseled both private companies planning to go public, as well as public companies as to their compliance with the corporate governance requirements under the Sarbanes-Oxley Act and the Dodd-Frank Act.

8. I have published articles regarding the whistleblowing provisions under the Dodd-Frank Act, as well as other securities laws topics.

9. I am intimately familiar with requirements related to electronic filings concerning Form 10-K submissions and publication thereof via the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) around 1998.

10. A more detailed account of my work experience, professional services, publications, and other qualifications is listed in my *Curriculum Vitae*, which is attached here to as Appendix A.

OSI Pharmaceuticals Inc. 1998 10K-Declaration of Laurence S. Lese, Esq.

11. I have been retained by counsel for Petitioners Apotex Inc., Apotex Corp., Apotex Pharmaceuticals Holdings Inc., and Apotex Holdings, Inc. to provide a declaration in this action concerning the availability to the public of documents filed with EDGAR in the 1998 time frame.

12. The facts, opinions, and conclusions in this declaration are based on my education, my extensive experience in this field as a securities law practitioner, and my review of the materials related to this matter.

13. I am being compensated at my consulting rate for my time spent on this matter, and I am also being reimbursed for reasonable expenses incurred with respect to this matter. My compensation is not contingent on the conclusions I reach herein or on the specifics of my testimony. I have no financial stake in the outcome of this proceeding.

## II. MATERIALS REVIEWED

14. In forming my opinions, I have reviewed OSI Pharmaceuticals, Inc. (“OSI”) annual report on Form 10-K for its fiscal year ended September 30, 1998 that OSI filed on December 23, 1998 with the SEC, as well as its filing status. A copy of this Report can be found in Appendix B.

15. I also reviewed relevant statutes and regulations concerning the submission and publication of annual reports via EDGAR.

### III. BACKGROUND AND LEGAL FRAMEWORK

16. I understand that OSI is subject to the reporting provisions under the Exchange Act, its common stock, par value \$.01 per share, being registered under Section 12(g) of the Exchange Act.

17. Under Congressional mandate, the SEC adopted the EDGAR system to afford the investing public immediate electronic access to documents filed on EDGAR. SEC Regulation S-T (17 CFR part 232) governs the filing of documents electronically under the EDGAR system. Regulation S-T was amended effective January 1, 1998, to provide that the SEC will not accept any paper filing that is required to be filed electronically, unless it satisfies the requirements for a temporary or continuing hardship exemption.

18. Most companies were phased into the EDGAR system for electronic filings between 1993 and 1996. By May 1997 all domestic issuers were required to file most documents electronically. (Rule 101 of Regulation S-T [17 CFR 232.101])

19. Therefore, when OSI closed its fiscal year on September 30, 1998, OSI was required to file its annual report on Form 10-K for that fiscal year electronically using EDGAR.

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