

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 JANSSEN ONCOLOGY, INC.,

8 Patent Owner.

9 Case No. IPR2016-01332

10 U.S. Patent No. 8,822,438

11 -----
12 WOCKHARDT BIO AG,

13 Petitioner,

14 v.

15 JANSSEN ONCOLOGY, INC.,

16 Patent Owner.

17 Case IPR2016-01582

18 U.S. Patent No. 8.822,438 B2

19 -----
20 VIDEOTAPED DEPOSITION OF MATTHEW
21 B. RETTIG, M.D., a Witness herein, taken
22 by Petitioners, at the offices of Sidley
23 Austin, 787 Seventh Avenue, New York, New
24 York, on Friday, March 31, 2017, at 9:08
25 a.m., before DEBRA STEVENS, Certified
Realtime and Registered Professional
Reporter and Notary Public within and for
the State of New York.

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1
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1
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3
4 PRIOR MARKED AND REFERENCED HEREIN
5 Mylan 1001 '438 Patent
6 Mylan 1005 '213 Patent
7 Mylan 1023 Attard 2005 article
8 Mylan 1003 O'Donnell article
9 Janssen 2014 Attard 2008 article
10 Janssen 2133 Ryan article
11 WCK 1035 Potter article
12 WCK 1036 Fakh article
13 WCK 1005 O'Donnell article
14 WCK 1002 Godley declaration
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1
2 THE VIDEOGRAPHER: This is the
3 beginning of file number one. We are
4 going on the record at approximately
5 9:08 a.m. My name is Kevin Gallagher,
6 representing Veritext, New York. The
7 date today is the 31st of March, 2017.
8 The deposition is being held at Sidley
9 Austin, located at 787 Seventh Avenue,
10 New York, New York.
11 The caption of the case is Mylan
12 Pharmaceuticals vs. Janssen Oncology,
13 Inc. and also Wockhardt et al. vs.
14 Janssen Oncology Inc. The case is
15 filed in the U.S. Patent and Trademark
16 Office, Case Number IPR2016-01332.
17 The name of our witness this morning
18 is Matthew Rettig.
19 At this time attorneys present
20 in the room will identify themselves
21 for the record.
22 (Brief interruption)
23 VIDEOGRAPHER: Off the record at
24 9:09 a.m.
25 (Recess.)

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1
2 VIDEOGRAPHER: We are going back
3 on the record approximately 9:10 a.m.
4 This is the beginning of File B.
5 MR. WHITE: This is Brandon
6 White from Perkins Coie, on behalf of
7 Petitioner Mylan.
8 MS. STUBBINGS: Marie Stubbings,
9 also from Perkins Coie, on behalf of
10 Petitioner Mylan.
11 MR. GALLO: Christopher Gallo
12 from Sterne Kessler Goldstein & Fox,
13 on behalf of Petitioner Wockhardt.
14 MR. VARUGHESE: Dennies
15 Varughese, Sterne Kessler Goldstein
16 Fox, on behalf of Petitioner
17 Wockhardt.
18 MS. DONOVAN: Bindu Donovan on
19 behalf of Patent Owner Janssen
20 Oncology Inc.
21 MS. MONSEN: Alyssa Monsen, on
22 behalf of Patent Owner Janssen
23 Oncology Inc.
24 MR. TRIDICO: Anthony Tridico on
25 behalf of Patent Owner BTG.

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1
2 MR. DOLAN: Tony Dolan, BTG.
3 VIDEOGRAPHER: Our court
4 reporter, Deb Stevens, also from
5 Veritext, will now swear in the
6 witness and we can proceed.
7 Whereupon,
8 M A T T H E W R E T T I G,
9 having been first duly sworn/affirmed,
10 was examined and testified as follows:
11 EXAMINATION BY
12 MR. WHITE:
13 Q. Good morning, Doctor.
14 A. Morning.
15 Q. My name is Brandon White and I
16 am here on behalf of Mylan to ask you some
17 questions today.
18 Would you state your name for
19 the record?
20 A. Matthew Rettig.
21 Q. Where are you currently
22 employed?
23 A. I am currently employed at the
24 UCLA School of Medicine and Department of
25 Veterans Affairs of West Los Angeles.

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1 M. Rettig
2 Q. You are the same Dr. Rettig who
3 submitted declarations and was deposed in
4 the Amerigen IPR a few months ago?
5 A. Yes.
6 Q. You have before you the
7 declaration that you submitted in response
8 to the Mylan papers. Is that right?
9 A. Yes.
10 Q. If I just refer to that as your
11 Mylan declaration, will you know what I am
12 referring to?
13 A. Yes.
14 MS. DONOVAN: I would like to
15 state for the record that it is
16 Janssen's position that Petitioner's
17 examination of Dr. Rettig will be
18 limited to the scope of the
19 declaration that he has submitted in
20 the Mylan IPR.
21 MR. WHITE: I understand your
22 position and you can object to our
23 questions if you believe they are
24 outside the scope. We take no
25 position on your statement.

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1 M. Rettig
 2 Q. I just want to go over the rules
 3 so we are on the same page for the
 4 deposition. I am sure you have probably
 5 heard these before.
 6 I will ask you ask you some
 7 questions. After I ask my question,
 8 Ms. Donovan may object. Unless she
 9 instructs you not to, you should try to
 10 answer my question if you can.
 11 We should try not to talk over
 12 each other for the reporter's sake. You
 13 should give your attorney time to object,
 14 again for the court reporter's sake. If I
 15 cut you off, it is inadvertent. Please
 16 tell me, and I will happily let you finish
 17 your answer. Again, I ask that you let me
 18 finish my question. Sometimes we can get
 19 conversational and you think you know
 20 where I am going with a question and start
 21 answering. It can make for a difficult
 22 record.
 23 If there is something I ask you
 24 that you don't understand or you need to
 25 see something, please let me know and I

Page 11

1 M. Rettig
 2 will try to clarify the question or
 3 provide you materials to the extent I can.
 4 Understood?
 5 And you should try to give
 6 verbal answers and not head nods or other
 7 gesturing. The court reporter can't take
 8 that down.
 9 MS. DONOVAN: Before we continue
 10 further --
 11 THE VIDEOGRAPHER: Off the
 12 record at 9:14 a.m.
 13 (Pause.)
 14 THE VIDEOGRAPHER: Back on the
 15 record at approximately 9:15 a.m.,
 16 beginning of file C.
 17 BY MR. WHITE:
 18 Q. As we finish up the rules, if at
 19 any time you need a break, feel free to
 20 let me know and I am happy to take a
 21 break.
 22 Do you believe there is any
 23 reason you can't give honest and truthful
 24 testimony today?
 25 A. No.

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1 M. Rettig
 2 MR. WHITE: Can we stipulate
 3 that the witness is here in response
 4 to our deposition notices filed in the
 5 IPR's?
 6 MS. DONOVAN: That's fine.
 7 Q. What did you do to prepare for
 8 your deposition today?
 9 A. I communicated with counsel and
 10 collaborated on the generation of my
 11 declaration.
 12 Q. Other than your meetings with
 13 counsel, did you speak to anyone else?
 14 A. No.
 15 Q. At any time have you spoken with
 16 any of the other witnesses for Janssen?
 17 A. No.
 18 Q. Did you ever speak with
 19 Dr. Vellteuro?
 20 A. No.
 21 Q. Did you review any materials to
 22 prepare for your deposition today?
 23 A. Yes.
 24 Q. What did you review?
 25 MS. DONOVAN: I will caution the

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1 M. Rettig
 2 witness, you may respond generally
 3 without disclosing the specifics of
 4 attorney-client privileged
 5 communications.
 6 A. I reviewed many of the exhibits
 7 related to this case.
 8 Q. Those are the materials that you
 9 cited in your declaration?
 10 A. Correct.
 11 Q. Did you review anything that you
 12 hadn't included in your declaration?
 13 MS. DONOVAN: You may answer
 14 that "yes" or "no."
 15 A. Not that I recall.
 16 Q. How much time did you spend in
 17 preparing the Mylan declaration?
 18 A. I don't have the exact number of
 19 hours, but many hours.
 20 Q. And that is many hours that were
 21 spent unique to the Mylan declaration and
 22 not as part of your work with the Amerigen
 23 case?
 24 A. Correct.
 25 Q. Do you have an understanding of

Page 14

1 M. Rettig
 2 what this dispute is about?
 3 A. Yes.
 4 Q. You understand you are here to
 5 talk about your opinions with respect to
 6 the '438 patent?
 7 A. Yes.
 8 Q. You understand what the '438
 9 patent is?
 10 A. Yes.
 11 Q. Other than your deposition in
 12 the Amerigen case, have you been deposed
 13 before?
 14 A. No.
 15 Q. Have you served as an expert
 16 witness other than in the Amerigen case?
 17 MS. DONOVAN: Objection to form.
 18 A. Can you clarify the specifics of
 19 what you mean by "expert witness"?
 20 Q. Sure. Other than with respect
 21 to your declarations with respect to the
 22 '438 patent that are in the Amerigen,
 23 Wockhardt and Mylan cases, have you been
 24 an expert witness in any litigations?
 25 A. So, I have been retained as an

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1 M. Rettig
 2 expert witness but was never deposed, and
 3 the cases were settled prior to my direct
 4 involvement.
 5 MS. DONOVAN: Let me just state
 6 for the record, we have disclosed
 7 Dr. Rettig under the protective order
 8 in the District Court litigation
 9 related to the '438 patent. So you
 10 may want to just clarify your
 11 question.
 12 Q. I understand you have been
 13 disclosed with respect to the '438 patent,
 14 so nothing with respect to the '438
 15 patent.
 16 Was that -- the other case that
 17 you referenced, was that public? Was your
 18 disclosure public?
 19 A. They were not just one case, but
 20 I don't know the disclosure status of
 21 those cases. They were tort claims.
 22 Q. So they weren't patent cases?
 23 A. No.
 24 Q. Have you ever testified at trial
 25 before?

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1 M. Rettig
 2 A. No.
 3 Q. Did you have any involvement
 4 with the development of abiraterone
 5 acetate?
 6 MS. DONOVAN: Object to the form
 7 of the question as vague.
 8 A. So, can you please specify what
 9 you mean by "development of abiraterone
 10 acetate"?
 11 Q. Prior to the FDA approval of
 12 abiraterone acetate did you have any
 13 involvement with abiraterone acetate?
 14 A. Yes. I did serve as an
 15 investigator in the clinical trials that
 16 led up to the approval of abiraterone
 17 acetate.
 18 Q. Which clinical trials were you
 19 involved with?
 20 A. So, the Phase III studies, both
 21 the -- as I recall, both the
 22 post-chemotherapy and pre-chemotherapy
 23 studies. I may have been a
 24 subinvestigator on one of the earlier
 25 phase studies, but I can't recall.

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1 M. Rettig
 2 Q. Do you remember what the
 3 treatment arms were in the studies you
 4 were involved with?
 5 MS. DONOVAN: Objection to form.
 6 A. For these -- if you are
 7 referring to the Phase III studies?
 8 Q. Mm-hmm.
 9 A. Yes, I do recall the treatment.
 10 Q. What were they?
 11 A. It was -- there were two arms in
 12 both of the studies. It was abiraterone
 13 acetate plus prednisone versus placebo
 14 plus prednisone.
 15 Q. What were what were your
 16 responsibilities as an investigator in
 17 those clinical trials?
 18 A. So, as an investigator there
 19 were some standard requirements and duties
 20 to generally oversee the conduct of the
 21 study, to make sure that appropriate
 22 persons who are involved in the study are
 23 trained, to make sure that the execution
 24 of the clinical trials and procedures is
 25 done accurately and that data are reported

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