

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

3 MYLAN PHARMACEUTICALS, INC.,

4 Petitioner,

5 v.

6 JANSSEN ONCOLOGY, INC.

7 Patent Owner.

8 Case IPR2016-01332

9 Patent 8,822,438

10 \_\_\_\_\_ and \_\_\_\_\_

11 WOCKHARDT BIO AG

12 Petitioner,

13 v.

14 JANSSEN ONCOLOGY, INC.

15 Patent Owner.

16 Case IPR2016-01582

17 Patent 8,822,438 B2

18 \_\_\_\_\_  
19 DEPOSITION OF

20 CHRISTOPHER A. VELLTURO, Ph.D

21 Wednesday, April 5, 2017

22 10:07 a.m.

Page 2	Page 4
<p>1 JOB NO.: 2587712</p> <p>2 PAGES: 1 - 148</p> <p>3 REPORTER: Donna M. Lewis, RPR, CSR (HI)</p> <p>4</p> <p>5</p> <p>6 Deposition of CHRISTOPHER A.</p> <p>7 VELLTURO,Ph.D, held at Sidley Austin, 1501</p> <p>8 K Street, N.W., Washington, D C pursuant to</p> <p>9 Notice, before Donna Marie Lewis, Registered</p> <p>10 Professional Reporter and Notary Public of and for</p> <p>11 the District of Columbia.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 ON BEHALF OF PETITIONER WOCKHARDT BIO AG:</p> <p>4 STERNE KESSLER GOLDSTEIN FOX</p> <p>5 BY: CHRISTOPHER M. GALLO, Ph.D., ESQUIRE</p> <p>6 1100 New York Avenue, N.W.</p> <p>7 Washington, D C 20005</p> <p>8 Telephone: (202) 772-8868</p> <p>9 Email: cgallo@skgf.com</p> <p>10</p> <p>11 STERNE KESSLER GOLDSTEIN FOX</p> <p>12 BY: KRISHAN THAKKER, ESQUIRE</p> <p>13 1100 New York Avenue, N.W.</p> <p>14 Washington, D C 20005</p> <p>15 Telephone: (202) 772-8643</p> <p>16 Email: kthakker@skgf.com</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
Page 3	Page 5
<p>1 APPEARANCES</p> <p>2 ON BEHALF OF PETITIONER MYLAN PHARMACEUTICALS</p> <p>3 INC.:</p> <p>4 PERKINS COIE</p> <p>5 BY: ROBERT D. SWANSON, ESQUIRE</p> <p>6 700 13th Street, N.W.</p> <p>7 Suite 600</p> <p>8 Washington, D C 20005</p> <p>9 Telephone: (202) 654-1729</p> <p>10 Email: RSwanson@perkinscoie.com</p> <p>11</p> <p>12 PERKINS COIE</p> <p>13 BY: SHANNON M. BLOODWORTH, ESQUIRE</p> <p>14 700 13th Street, N.W.</p> <p>15 Suite 600</p> <p>16 Washington, D C 20005</p> <p>17 Telephone: (202) 654-6204</p> <p>18 Email: SBloodworth@perkinscoie.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 ON BEHALF OF PATENT OWNER JANSSEN ONCOLOGY, INC.:</p> <p>4 SIDLEY AUSTIN, LLP</p> <p>5 BY: PAUL J. ZEGGER, ESQUIRE</p> <p>6 1501 K Street, N.W.</p> <p>7 Washington, D C 20005</p> <p>8 Telephone: (202) 736-8060</p> <p>9 Email: pzegger@sidley.com</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 GRAHAM DAVIS, LEGAL VIDEOGRAPHER</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p>1 INDEX</p> <p>2 WITNESS:</p> <p>3 CHRISTOPHER A. VELLTURO, PhD</p> <p>4 EXAMINATION BY: PAGE</p> <p>5 BY MR. SWANSON</p> <p>6</p> <p>7 EXHIBITS</p> <p>(Attached)</p> <p>8 VELLTURO</p> <table border="1"> <thead> <tr> <th>EXHIBITS:</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>9 No. 1088</td> <td>BTG Website Printout</td> <td>17</td> </tr> <tr> <td>10 No. 1089</td> <td>Zytiga Website Printout</td> <td>57</td> </tr> <tr> <td>11</td> <td></td> <td></td> </tr> <tr> <td>12 EXHIBITS PREVIOUSLY MARKED</td> <td></td> <td></td> </tr> <tr> <td></td> <td>(Not Attached)</td> <td></td> </tr> <tr> <td>13 No. 2044</td> <td>Declaration of C Velturo</td> <td>10</td> </tr> <tr> <td>14 No. 2028</td> <td>Declaration of I Judson</td> <td>11</td> </tr> <tr> <td>15 No. 1065</td> <td>Zytiga's Label</td> <td>72</td> </tr> <tr> <td>16 No. 2134</td> <td>Market Share Document</td> <td>78</td> </tr> <tr> <td>17 No. 2110</td> <td>Johnson &amp; Johnson 2012 Reports</td> <td>111</td> </tr> <tr> <td>18 No. 2092</td> <td>Survey of Urologists</td> <td>128</td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> </tbody> </table>	EXHIBITS:	DESCRIPTION	PAGE	9 No. 1088	BTG Website Printout	17	10 No. 1089	Zytiga Website Printout	57	11			12 EXHIBITS PREVIOUSLY MARKED				(Not Attached)		13 No. 2044	Declaration of C Velturo	10	14 No. 2028	Declaration of I Judson	11	15 No. 1065	Zytiga's Label	72	16 No. 2134	Market Share Document	78	17 No. 2110	Johnson & Johnson 2012 Reports	111	18 No. 2092	Survey of Urologists	128	19			20			21			22			<p>1 of Mylan. I'm with Perkins Coie. With me is</p> <p>2 Shannon Bloodworth also with Perkins Coie.</p> <p>3 MR. GALLO: I'm Christopher Gallo from</p> <p>4 Sterne, Kessler, Goldstein &amp; Fox representing</p> <p>5 petitioner Wockhardt.</p> <p>6 MR. THAKKER: I'm Krishan Thakker from</p> <p>7 Sterne, Kessler, Goldstein &amp; Fox also representing</p> <p>8 petitioner Wockhardt.</p> <p>9 MR. ZEGGER: Paul Zegger with Sidley</p> <p>10 Austin for the patent owner.</p> <p>11 THE VIDEOGRAPHER: Our court reporter,</p> <p>12 Donna Lewis representing Veritext will swear in</p> <p>13 the witness and we can proceed.</p> <p>14 Whereupon,</p> <p>15 CHRISTOPHER A. VELLTURO, Ph.D.</p> <p>16 after having been first duly sworn by the Notary</p> <p>17 Public was examined and testified as follows:</p> <p>18 EXAMINATION ON BEHALF OF PETITIONER MYLAN</p> <p>19 PHARMACEUTICALS INC.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q Good morning, Dr. Velturo.</p> <p>22 A Good morning.</p>
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<p>Page 7</p> <p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 THE VIDEOGRAPHER: So we are now on the</p> <p>3 record. Please note that the microphones are</p> <p>4 sensitive and may pick up whispering and private</p> <p>5 conversations. Please turn off all cell phones or</p> <p>6 place them away for the microphones as they can</p> <p>7 interfere with the deposition audio. Recording</p> <p>8 will continue until all parties have agreed to go</p> <p>9 off of the record. My name is Graham Davis</p> <p>10 representing Veritext. And today's date is</p> <p>11 April 5, 2017. And the time is approximately</p> <p>12 a.m. This deposition is being held at Sidley</p> <p>13 Austin and is being taken by counsel for the</p> <p>14 plaintiffs. This caption of the case is Mylan</p> <p>15 Pharmaceuticals Incorporated v. Janssen Oncology.</p> <p>16 This case is filed in the United States Patent and</p> <p>17 Trademark Office. The name of the witness is</p> <p>18 Christopher A. Velturo, Ph.D.</p> <p>19 At this time the attorneys present in</p> <p>20 the room and attending remotely will identify</p> <p>21 themselves and the parties that they represent.</p> <p>22 MR. SWANSON: Robert Swanson on behalf</p>	<p>Page 9</p> <p>1 Q I know you have done this a few times</p> <p>2 before so I hope I don't need to go over all of</p> <p>3 the ground rules, but I do want to mention a</p> <p>4 couple especially because this is an IPR. It's</p> <p>5 really important to -- you know, this is always</p> <p>6 true. But given it's an IPR it's always important</p> <p>7 to say yes or no versus uh huh or huh uh just to</p> <p>8 provide a clear record since we are making a trial</p> <p>9 record in this proceeding. Does that work for</p> <p>10 you?</p> <p>11 A That's fine.</p> <p>12 Q And feel free to let me know if you need</p> <p>13 to take a break or anything and we can finish</p> <p>14 whatever question is currently pending and then we</p> <p>15 can take a break. Sounds good?</p> <p>16 A Understood.</p> <p>17 Q So you understand that the priority date</p> <p>18 of the patent at issue in this proceeding is</p> <p>19 August 25, 2006?</p> <p>20 A My recollection is it's August 2006.</p> <p>21 25th sounds right.</p> <p>22 MR. SWANSON: Okay. That's good enough.</p>																																																

1 I will give you your report which is Exhibit 2044.  
 2 (Whereupon, Exhibit No. 2044 previously  
 3 marked was introduced.)  
 4 BY MR. SWANSON:  
 5 Q And if you could turn to paragraph 30 of  
 6 your report, Exhibit 2044. Let me know when you  
 7 are there?  
 8 A Paragraph 30. Is that what you said?  
 9 Q Yes.  
 10 A I'm at paragraph 30.  
 11 Q Boehringer suspended its involvement  
 12 with abiraterone acetate development in 1999,  
 13 right?  
 14 A Yes. That's my recollection.  
 15 Q And the first evidence that you present  
 16 of BTG trying to license the '213 Patent was in  
 17 2002. Is that correct?  
 18 A That's where the search of the Wayback  
 19 Machine was undertaken, back in 2002. I'm not  
 20 sure whether something happened before that. But  
 21 I certainly found evidence as of 2002.  
 22 Q And you didn't present any other

1 evidence between 1999 and 2002 that BTG was  
 2 actively trying to license the '213 Patent.  
 3 Correct?  
 4 A I would have to see the Judson  
 5 declaration again.  
 6 Q Sure.  
 7 A I seem to recall that there wasn't a  
 8 date stamp on his affidavit in terms of when they  
 9 were trying to relicense or license again the  
 10 technology.  
 11 MR. SWANSON: So I will hand you what  
 12 has already been marked as Exhibit 2028, which is  
 13 the Judson declaration. And I believe the  
 14 paragraph you are looking for is paragraph seven.  
 15 You already have the first one. These  
 16 have already been marked. These have already been  
 17 marked. I will let you know if I need to mark  
 18 something else.  
 19 (Whereupon, Exhibit No. 2028 previously  
 20 marked was introduced.)  
 21 THE WITNESS: I see paragraph seven.  
 22 Oh, I'm sorry. I said I see paragraph seven.

1 BY MR. SWANSON:  
 2 Q And does paragraph seven say when BTG  
 3 began actively trying to license the '213 Patent?  
 4 A The phrase in paragraph seven is, in the  
 5 years following 2000.  
 6 Q And so you don't have any evidence  
 7 between 1999 and 2002 specifically that BTG was  
 8 actively trying to license the '213 Patent, right?  
 9 A Well, the qualifier here is in the years  
 10 following 2000. That would include 2001.  
 11 Q But it doesn't necessarily say 2000 or  
 12 2001, does it?  
 13 A The number 2001 doesn't appear in  
 14 paragraph seven.  
 15 Q And there is no citation to any evidence  
 16 in paragraph seven of Exhibit 2028, is there?  
 17 A I'm not a lawyer. Isn't this evidence?  
 18 This is an affidavit by a fact witness.  
 19 Q Sure.  
 20 A Okay.  
 21 Q But in paragraph seven of Exhibit 2028  
 22 Judson does not cite to any other document other

1 than his own recollection as he is proclaiming his  
 2 declaration. Right?  
 3 A I don't see any references or footnotes  
 4 to documents in paragraph seven.  
 5 Q And so you are relying entirely on  
 6 Dr. Judson's statement in paragraph seven.  
 7 Correct?  
 8 A No.  
 9 MR. ZEGGER: Object to the form.  
 10 THE WITNESS: No, that's not correct.  
 11 BY MR. SWANSON:  
 12 Q For any potential evidence before 2002  
 13 that BTG was actively trying to license the  
 14 '213 Patent you are relying solely on Dr. Judson's  
 15 statement in his declaration, not any other  
 16 external evidence. Correct?  
 17 A I wouldn't agree with that  
 18 characterization.  
 19 Q What's wrong with that characterization?  
 20 A Well, I see that the Judson declaration  
 21 indicates that following 2000 efforts were  
 22 undertaken. I observed efforts from the Wayback

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1 Machine in 2002. Consistent with that would be  
 2 that there would be efforts in 2001. Did I  
 3 explicitly find those? No. But given that as of  
 4 late 1999 Boehringer Ingelheim had suspended its  
 5 involvement, and that in 2002 there is active  
 6 marketing of the license or the potential license,  
 7 and given Mr. Judson's statement that after 2000  
 8 they were seeking licensees, all of that indicates  
 9 to me that in 2001 it's highly likely they were  
 10 also actively seeking licensees.  
 11 Q So you state that in 1999 Boehringer  
 12 suspended its involvement with abiraterone acetate  
 13 development. Right?  
 14 A Well, if you read Mr. Judson's language  
 15 carefully it says that there was a report right at  
 16 the end of 1999. And subsequently Boehringer  
 17 Ingelheim decided not to continue. So that is  
 18 either late 1999 or early 2000.  
 19 Q And then you rely on Dr. Judson's  
 20 statement that in the years following 2000 a  
 21 number of major multinational pharmaceutical  
 22 companies were approached. Right?

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1 A In part I rely on that statement, yes.  
 2 Q And then you don't find any evidence  
 3 that you cite of BTG trying to license the  
 4 '213 Patent until 2002. Correct?  
 5 A Right. The -- the information that we  
 6 located through the Wayback Machine was from 2002.  
 7 I don't remember whether we looked for 2001 or  
 8 not. I just don't recall.  
 9 Q So the only documentary evidence that  
 10 you cite -- the earliest -- I will start over.  
 11 The earliest documentary evidence that  
 12 you cite of BTG trying to actively license the  
 13 '213 Patent following Boehringer's suspension of  
 14 involvement with abiraterone acetate was in 2002.  
 15 Correct?  
 16 A In your definition of documentary  
 17 evidence you are excluding Mr. Judson's affidavit?  
 18 Q Correct.  
 19 A All right. The first documents that I  
 20 cite other than the Judson declaration with  
 21 respect to activity associated with BTG's  
 22 licensing efforts from this time period is from

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1 2002.  
 2 Q And then if you can look at paragraph 31  
 3 of your declaration you cite to two annual reports  
 4 from BTG. In the three statements that you quote  
 5 in paragraph 31 of your declaration none of those  
 6 statements refer to abiraterone acetate  
 7 specifically. Correct?  
 8 A Well, those three quotes, the phrase  
 9 abiraterone acetate does not appear in those  
 10 quotes, but I think if we go back and look at  
 11 those pages I believe it's discussed.  
 12 Q And the '213 Patent was licensed to  
 13 Cougar in April 2004. Correct?  
 14 A That's my recollection, yes.  
 15 Q And that was an exclusive license?  
 16 A I believe it had exclusivity in it under  
 17 certain conditions. I would have to see the  
 18 license again. But to some degree, yes, there was  
 19 exclusivity associated --  
 20 Q -- And you have seen the license?  
 21 A Yes, I believe I have.  
 22 Q Is there a reason you don't list the

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1 license on your list of materials considered in  
 2 appendix 8 of your declaration?  
 3 A Well, I think, as you appreciate, this  
 4 is a fairly unusual set of circumstances. There  
 5 are actually four distinct cases in which I'm  
 6 involved with respect to this patent and this  
 7 product.  
 8 And have I seen the license? I believe  
 9 so. Did I see it in conjunction with preparing  
 10 this report? I may not have.  
 11 Q And the license is confidential.  
 12 Correct?  
 13 A I don't recall. They usually are, but I  
 14 don't have it memorized.  
 15 MR. SWANSON: I'm going to mark a  
 16 document as Exhibit 1088. It's a -- sorry. I'll  
 17 let you mark it.  
 18 (Whereupon, Exhibit No. 1088 was marked  
 19 for identification.)  
 20 BY MR. SWANSON:  
 21 Q And Exhibit 1088 is a printout from  
 22 BTG's website and specifically it's a press

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