

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

3  
4 WOCKHARDT BIO AG,

5 Petitioner,

6 vs.

No. IPR2016-01582

Patent 8,822,438

7 JANSSEN ONCOLOGY, INC.,

8 Patent Owner.

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10  
11 VIDEOTAPED DEPOSITION OF ROBERT D. STONER, PH.D.

12 San Francisco, California

13 Friday, February 10, 2017

14 Veritext Legal Solutions

15 Mid-Atlantic Region

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18  
19 REPORTED BY:

20 LESLIE ROCKWOOD, RPR, CSR 3462

21 Pages 1 - 121

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 9 Patent Owner.  
 10 \_\_\_\_\_/  
 11 Videotaped deposition of ROBERT D. STONER, PH.D.,  
 12 taken on behalf of the Patent Owner, at the offices of  
 13 Sidley Austin LLP, 555 California Street, Suite 2000, San  
 14 Francisco, beginning at 9:03 A.M. and ending at 12:50  
 15 P.M., on Friday, February 10, 2017, before Leslie  
 16 Rockwood, RPR, CSR No. 3462.  
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 18  
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Page 4

1 I N D E X  
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 3  
 4 FRIDAY, FEBRUARY 10, 2017  
 5  
 6 WITNESS EXAMINATION  
 7 ROBERT D. STONER, PH.D.  
 8  
 9 BY MR. ZEGGER 7  
 10  
 11 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:  
 12  
 13 Page Line  
 14 117 23  
 15  
 16  
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 18  
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 20  
 21  
 22  
 23  
 24  
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Page 3

1 APPEARANCES:  
 2  
 3 FOR THE PETITIONER WOCKHARDT BIO AG:  
 4 STERNE KESSLER GOLDSTEIN FOX  
 5 BY: CHRISTOPHER M. GALLO, PH.D., ESQ.  
 6 DENNIES VARUGHESE, PHARM.D., ESQ.  
 7 1100 New York Avenue, N.W.  
 8 Washington, D.C. 20005  
 9 (202) 772-8868 (Dr. Gallo)  
 10 (202) 772-8805 (Dr. Varughese)  
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 20 pzegger@sidley.com  
 21  
 22  
 23 Also Present:  
 24 Ramon Peraza, Videographer  
 25

Page 5

1 DEPOSITION EXHIBITS  
 2 ROBERT D. STONER, PH.D.  
 3 NUMBER DESCRIPTION IDENTIFIED  
 4 Exhibit JSN 2012 PMLive, Top 50 104  
 5 Pharmaceutical Products By  
 6 global Sales, 2.1.17  
 7 Exhibit JSN 2013 Johnson & Johnson Reports 105  
 8 2015 Fourth-Quarter Results,  
 9 1.26.16  
 10 Exhibit JSN 2014 Johnson & Johnson Reports 106  
 11 2016 Fourth-Quarter Results,  
 12 1.24.17  
 13  
 14 PREVIOUSLY MARKED EXHIBITS REFERENCED:  
 15  
 16 EXHIBIT NUMBER PAGE  
 17 Exhibit 1067 96  
 18 Exhibit 1070 98  
 19 Exhibit 1077 7  
 20 Exhibit 1078 25  
 21  
 22  
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1 San Francisco, California; Friday, February 10, 2017  
2 9:03 A.M.  
3  
4 PROCEEDINGS  
5  
6 THE VIDEOGRAPHER: Good morning. We are on the  
7 record at 9:03 a.m. on February 10th, 2017. This is the  
8 videotaped deposition of Dr. Robert D. Stoner.  
9 My name is Ramon Peraza, here with our court  
10 reporter Leslie Rockwood. We are here from Veritext  
11 Legal Solutions at the request of counsel for the patent  
12 owner.  
13 This deposition is being held at Sidley in San  
14 Francisco. The caption of this case is Wockhardt Bio AG  
15 versus Janssen Oncology, Inc., Case Number IPR2016-01582.  
16 Please note that audio and video recording will  
17 take place unless all parties have agreed to go off the  
18 record. Microphones are sensitive and may pick up  
19 whispers or private conversations.  
20 At this time, Counsel, please identify  
21 yourselves for the record and state whom you represent.  
22 MR. ZEGGER: I'm Paul Zegger with Sidley Austin  
23 for the patent owner Janssen Oncology, Inc.  
24 MR. GALLO: I'm Christopher Gallo, here with me  
25 is Dennies Varughese, for the petitioner Wockhardt Bio

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1 AG, represented by Sterne Kessler.  
2 THE VIDEOGRAPHER: The court reporter may now  
3 swear in the witness.  
4 THE REPORTER: If you'd raise your right hand,  
5 please, Dr. Stoner.  
6 You do solemnly state that the evidence you  
7 shall give in this matter shall be the truth, the whole  
8 truth and nothing but the truth, so help you God?  
9 THE WITNESS: I do.  
10 THE REPORTER: Thank you, sir.  
11 EXAMINATION  
12 BY MR. ZEGGER:  
13 Q. Good morning, sir.  
14 A. Good morning.  
15 Q. Let me put before you a document that has been  
16 previously marked as Wockhardt Exhibit 1077.  
17 Sir, do you recognize this as your declaration  
18 in the present IPR?  
19 A. I do.  
20 Q. Is that your signature on the last page?  
21 A. Yes, it is.  
22 Q. You signed your declaration on August 9th, 2016;  
23 is that right?  
24 A. Correct.  
25 Q. Now, is it correct that your declaration deals

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1 with the issue of commercial success as it relates to the  
2 issue of obviousness or non-obviousness of the '438  
3 patent?  
4 A. That's correct.  
5 Q. Your background is in economics; is that right?  
6 A. It is.  
7 Q. You're not offering any medical opinions?  
8 A. No, I'm not.  
9 Q. You wouldn't be qualified to do that; is that  
10 right?  
11 A. That's correct.  
12 Q. You're not offering any legal opinions; is that  
13 right?  
14 A. That's correct.  
15 Q. And you're not qualified to do so?  
16 A. Correct.  
17 Q. Could you look at your declaration pages 4 to 7,  
18 specifically the table of exhibits that you've  
19 identified?  
20 A. Yes.  
21 Q. Is that a list of the materials you considered  
22 for your declaration?  
23 A. That is a list of the materials I considered for  
24 my declaration, but I -- I also did a good deal of  
25 background reading and familiarizing myself with the

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1 general area of prostate cancer.  
2 Q. Were the materials in your table of materials  
3 considered provided to you?  
4 A. They were -- there was an exchange between  
5 myself and the lawyers. I -- I -- you know, I mean, I  
6 wrote the draft of my report. It had certain citations  
7 in it, some of -- some of which were materials that I had  
8 gathered. Those went into this list. In some cases, I  
9 asked the attorneys for assistance in other citations  
10 where I didn't have a good citation for a particular  
11 proposition or where I felt I needed additional  
12 citations.  
13 So the list was -- was -- was begun in my --  
14 when I submitted a draft, and it had a list of all the --  
15 all the articles and citations that I was going to depend  
16 on, but that -- that list was -- was added to over time  
17 between the lawyers and myself.  
18 Q. Okay. Can you identify the exhibits that you  
19 found on your own?  
20 MR. GALLO: Objection. Privilege. I'm going to  
21 caution you not to divulge any information about what we  
22 discussed.  
23 THE WITNESS: Almost all of the exhibits are  
24 ones that I designated myself. There's a few exhibits  
25 here where there were -- where there was a legal citation

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1 needed or a cite to a case that the lawyers provided.  
2 Much of this was provided to me initially in -- I -- I  
3 was able to take advantage of -- of the -- of some of the  
4 prior filings in the Amerigen proceeding, and so that was  
5 provided to me initially, and I indicated which of those  
6 I was depending on in -- in putting forward this report.  
7 Q. BY MR. ZEGGER: And in the process of putting  
8 together your declaration, you looked at the materials  
9 that had been filed in the Amerigen earlier IPR on the  
10 same '438 patent?  
11 A. Yes. I mean, I don't know that I looked at all  
12 the materials. But I -- I looked at a good -- good  
13 amount of those materials.  
14 Q. Did you also look at materials that had been  
15 filed in the context of a Mylan IPR, also on the  
16 '438 patent?  
17 A. I did look at a few things in -- in that. I  
18 looked at the -- I believe I looked at the expert report  
19 of -- of -- I'm forgetting his name.  
20 Q. Okay. Could you look at your declaration,  
21 page 3, Footnote 1? Are you there?  
22 A. Yes, I am.  
23 Q. Now, that mentions a declaration of  
24 Deforest McDuff in IPR brought by Amerigen; is that  
25 right?

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1 A. Correct.  
2 Q. And, specifically, Footnote 1 in your  
3 declaration states, quote, "I reviewed the McDuff  
4 declaration," close quote; is that right?  
5 A. Correct.  
6 Q. Did you, in fact, review Dr. McDuff's  
7 December 4th, 2015, declaration in IPR 2016-00286?  
8 A. I believe I did.  
9 Q. Is it your understanding that Dr. McDuff is an  
10 economist hired by Amerigen?  
11 A. I believe that's my understanding.  
12 Q. Okay. Did you rely upon Dr. McDuff's  
13 declaration in forming your opinions set forth in your  
14 declaration?  
15 A. I wouldn't say I relied on it. But I -- I  
16 certainly looked at it and considered the elements of  
17 what he had said. And then I went -- went about the  
18 business of putting down my own opinion.  
19 Q. Okay. But to some extent, it played a part in  
20 forming your opinions?  
21 A. Not any more than any other material that I  
22 considered.  
23 Q. Did you talk to Dr. McDuff about his declaration  
24 for Amerigen?  
25 A. I did not, no.

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1 Q. Have you compared your declaration to that of  
2 Dr. McDuff's to see if any portions are the same or  
3 substantially the same?  
4 A. I have not done such a comparison. But I've  
5 noted that there -- there are certain elements of the  
6 Amerigen record or the public record that made their way  
7 into my declaration that were also in his.  
8 Q. Now, Footnote 1 in your declaration also  
9 mentions a declaration of Ivan Hofmann, filed by Mylan,  
10 in IPR 2016-01332; is that right?  
11 A. Correct. That's -- that's the gentleman. I was  
12 trying to remember his name a minute ago.  
13 Q. Okay. Did you also review the declaration of  
14 Mr. Hofmann in the Mylan IPR?  
15 A. I -- I do remember reading it, yes.  
16 Q. Okay. Do you understand that Mr. Hofmann was  
17 someone hired by Mylan?  
18 A. I do understand that.  
19 Q. Did you talk to Mr. Hofmann about his  
20 declaration for Mylan?  
21 A. I did not.  
22 Q. Did you rely upon Mr. Hoffman's declaration in  
23 forming your opinions set forth in your declaration?  
24 A. Again, no more so than any other of the  
25 materials that I relied on in putting together my

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1 opinion.  
2 Q. Well, to some extent you relied upon it?  
3 A. I mean, I considered it.  
4 Q. Have you compared your declaration to that of  
5 Mr. Hoffman's to see if any portions are the same or  
6 substantially the same?  
7 A. I have not done a direct comparison, no.  
8 Q. Would you be surprised if portions of your  
9 declaration are identical to those in Dr. McDuff's or  
10 Mr. Hoffman's declarations?  
11 A. I -- I wouldn't be surprised if there were  
12 certain similarities, since we were dealing with the same  
13 issues. And it appears that we came to the same  
14 conclusions independently.  
15 Q. Have you read the depositions taken of  
16 Dr. McDuff or Mr. Hofmann?  
17 A. I believe I've read two depositions of  
18 Dr. McDuff, because I think he just supplied a second  
19 report more recently. And I don't remember reading the  
20 deposition of -- of Mr. Hofmann. But I might have.  
21 Q. When were you first retained to work on this  
22 IPR?  
23 A. I think it was sometime in June or July of 2016.  
24 Q. So about a month or two before you signed your  
25 declaration?

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1 A. A couple of months, I believe.  
2 Q. What were you asked to do?  
3 A. I was asked to consider the -- the commercial  
4 success issues in conjunction with obviousness or  
5 non-obviousness of the '438 patent.  
6 Q. How much time did you spend as of the date of  
7 your declaration, August 9th, 2016?  
8 A. I think I spent somewhere between 50 and  
9 100 hours in -- in putting together the report and  
10 gaining an understanding of -- of the market.  
11 Q. Did anyone help you?  
12 A. In my firm, for example?  
13 Q. Well, just -- in the entire context of putting  
14 together your declaration in this case, did anyone assist  
15 you?  
16 A. No. I -- I put together the declaration. It  
17 was -- you know, I -- I submitted a draft to the lawyers.  
18 They made some comments. I submitted another draft and  
19 went through that process. So in that sense, it was a --  
20 there was a process in putting it together. But I didn't  
21 rely on anybody else in -- in my firm, other than  
22 potentially having a brief conversation with something --  
23 somebody about an issue.  
24 Q. Well, do you recall what that issue was?  
25 A. Not really.

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1 Q. Now, as part of your assignment, were you asked  
2 to do an independent evaluation of the commercial success  
3 of the '438 patented invention?  
4 A. I believe I -- I answered that. Yes.  
5 Q. What criteria did you use to determine  
6 commercial success?  
7 MR. GALLO: Objection. Form.  
8 THE WITNESS: Well, commercial success is a --  
9 is a legal construct that -- that, you know,  
10 patentholders sometimes would forward as a -- as a  
11 secondary indicia of -- of non-obviousness.  
12 And though the -- the legal assumption is that  
13 if there's some degree of marketing success of the  
14 product, and, furthermore, that the -- there's an excess  
15 between the novel aspects of the patent and the product's  
16 success, that the fact that a third party didn't come  
17 forward with the innovation before the patentholder, in  
18 certain situations can be an indicator of  
19 non-obviousness.  
20 So my -- my -- my goal was to test that  
21 assumption and to provide a full analysis of whether that  
22 inference made sense or not.  
23 And so in -- in trying to determine whether that  
24 inference made sense, I looked at a number of issues.  
25 The first issue being whether one could say there was a

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1 marketing success to start with, whether the product  
2 was -- was likely profitable. And whether a third party  
3 in the position of trying to evaluate whether -- to  
4 undertake the innovation back before the patent was  
5 filed, whether that third party would have viewed the --  
6 the innovation as being a profitable opportunity. That  
7 was the first part of my analysis.  
8 Then the next part was to say, "Okay. Well,  
9 even if there was a profitable opportunity, was it in any  
10 way connected to a novel aspect of the patent?" Because  
11 if it wasn't, then it was a profitable opportunity, but  
12 it wasn't -- it wasn't dependent on any innovation that  
13 was non-obviousness.  
14 And then the third thing I looked at was whether  
15 there were any other impediments to a third party  
16 innovating before the -- back before the patent came  
17 forward.  
18 Was there -- were there any other impediments  
19 besides potential non-obviousness that would explain why  
20 a third party didn't come forward with that innovation at  
21 the same time or before the patentholder?  
22 And the things I looked at there were things  
23 such as: Were there blocking patents? Were there --  
24 were there strategic asymmetries between the position of  
25 the patentholder, Janssen, and a potential third party

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1 that would explain why Janssen might have come forward  
2 with the -- with the innovation but the third party would  
3 not, besides a non-obviousness?  
4 And, finally, I looked at whether there were  
5 different -- there was -- another obstacle could be  
6 potential difference in the risks that were seen and the  
7 rewards that were seen of coming forward with the  
8 innovation at that time -- at the earlier time that would  
9 explain why the innovation didn't come forward, but that  
10 it may be -- but that Janssen developed it later.  
11 So that was -- that was pretty much the scope of  
12 what I was looking at.  
13 Q. BY MR. ZEGGER: And we'll talk about all of  
14 those as -- as we go on. I wanted to focus on the time  
15 frame before you looked at any documents in the context  
16 of this case, right when you took on the assignment.  
17 A. Yes.  
18 Q. Did you have any preexisting metrics for sales  
19 that would constitute for commercial success?  
20 A. Based on my experience in dealing with the  
21 commercial success in prior cases? Is that what you're  
22 asking? Because you're saying I didn't know anything  
23 about this case.  
24 Q. Right. I'm just wondering, before you looked at  
25 the evidence that -- that you evaluated in the context of

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