

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

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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

Page 2

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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
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11 WCK 1035 Potter article
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Page 6	Page 8
<p>1</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of file number one. We are</p> <p>4 going on the record at approximately</p> <p>5 9:08 a.m. My name is Kevin Gallagher,</p> <p>6 representing Veritext, New York. The</p> <p>7 date today is the 31st of March, 2017.</p> <p>8 The deposition is being held at Sidley</p> <p>9 Austin, located at 787 Seventh Avenue,</p> <p>10 New York, New York.</p> <p>11 The caption of the case is Mylan</p> <p>12 Pharmaceuticals vs. Janssen Oncology,</p> <p>13 Inc. and also Wockhardt et al. vs.</p> <p>14 Janssen Oncology Inc. The case is</p> <p>15 filed in the U.S. Patent and Trademark</p> <p>16 Office, Case Number IPR2016-01332.</p> <p>17 The name of our witness this morning</p> <p>18 is Matthew Rettig.</p> <p>19 At this time attorneys present</p> <p>20 in the room will identify themselves</p> <p>21 for the record.</p> <p>22 (Brief interruption)</p> <p>23 VIDEOGRAPHER: Off the record at</p> <p>24 9:09 a.m.</p> <p>25 (Recess.)</p>	<p>1</p> <p>2 MR. DOLAN: Tony Dolan, BTG.</p> <p>3 VIDEOGRAPHER: Our court</p> <p>4 reporter, Deb Stevens, also from</p> <p>5 Veritext, will now swear in the</p> <p>6 witness and we can proceed.</p> <p>7 Whereupon,</p> <p>8 M A T T H E W R E T T I G,</p> <p>9 having been first duly sworn/affirmed,</p> <p>10 was examined and testified as follows:</p> <p>11 EXAMINATION BY</p> <p>12 MR. WHITE:</p> <p>13 Q. Good morning, Doctor.</p> <p>14 A. Morning.</p> <p>15 Q. My name is Brandon White and I</p> <p>16 am here on behalf of Mylan to ask you some</p> <p>17 questions today.</p> <p>18 Would you state your name for</p> <p>19 the record?</p> <p>20 A. Matthew Rettig.</p> <p>21 Q. Where are you currently</p> <p>22 employed?</p> <p>23 A. I am currently employed at the</p> <p>24 UCLA School of Medicine and Department of</p> <p>25 Veterans Affairs of West Los Angeles.</p>
<p>Page 7</p> <p>1</p> <p>2 VIDEOGRAPHER: We are going back</p> <p>3 on the record approximately 9:10 a.m.</p> <p>4 This is the beginning of File B.</p> <p>5 MR. WHITE: This is Brandon</p> <p>6 White from Perkins Coie, on behalf of</p> <p>7 Petitioner Mylan.</p> <p>8 MS. STUBBINGS: Marie Stubbings,</p> <p>9 also from Perkins Coie, on behalf of</p> <p>10 Petitioner Mylan.</p> <p>11 MR. GALLO: Christopher Gallo</p> <p>12 from Sterne Kessler Goldstein & Fox,</p> <p>13 on behalf of Petitioner Wockhardt.</p> <p>14 MR. VARUGHESE: Dennies</p> <p>15 Varughese, Sterne Kessler Goldstein</p> <p>16 Fox, on behalf of Petitioner</p> <p>17 Wockhardt.</p> <p>18 MS. DONOVAN: Bindu Donovan on</p> <p>19 behalf of Patent Owner Janssen</p> <p>20 Oncology Inc.</p> <p>21 MS. MONSEN: Alyssa Monsen, on</p> <p>22 behalf of Patent Owner Janssen</p> <p>23 Oncology Inc.</p> <p>24 MR. TRIDICO: Anthony Tridico on</p>	<p>Page 9</p> <p>1 M. Rettig</p> <p>2 Q. You are the same Dr. Rettig who</p> <p>3 submitted declarations and was deposed in</p> <p>4 the Amerigen IPR a few months ago?</p> <p>5 A. Yes.</p> <p>6 Q. You have before you the</p> <p>7 declaration that you submitted in response</p> <p>8 to the Mylan papers. Is that right?</p> <p>9 A. Yes.</p> <p>10 Q. If I just refer to that as your</p> <p>11 Mylan declaration, will you know what I am</p> <p>12 referring to?</p> <p>13 A. Yes.</p> <p>14 MS. DONOVAN: I would like to</p> <p>15 state for the record that it is</p> <p>16 Janssen's position that Petitioner's</p> <p>17 examination of Dr. Rettig will be</p> <p>18 limited to the scope of the</p> <p>19 declaration that he has submitted in</p> <p>20 the Mylan IPR.</p> <p>21 MR. WHITE: I understand your</p> <p>22 position and you can object to our</p> <p>23 questions if you believe they are</p> <p>24 outside the scope. We take no</p>

<p style="text-align: right;">Page 10</p> <p>1 M. Rettig</p> <p>2 Q. I just want to go over the rules</p> <p>3 so we are on the same page for the</p> <p>4 deposition. I am sure you have probably</p> <p>5 heard these before.</p> <p>6 I will ask you ask you some</p> <p>7 questions. After I ask my question,</p> <p>8 Ms. Donovan may object. Unless she</p> <p>9 instructs you not to, you should try to</p> <p>10 answer my question if you can.</p> <p>11 We should try not to talk over</p> <p>12 each other for the reporter's sake. You</p> <p>13 should give your attorney time to object,</p> <p>14 again for the court reporter's sake. If I</p> <p>15 cut you off, it is inadvertent. Please</p> <p>16 tell me, and I will happily let you finish</p> <p>17 your answer. Again, I ask that you let me</p> <p>18 finish my question. Sometimes we can get</p> <p>19 conversational and you think you know</p> <p>20 where I am going with a question and start</p> <p>21 answering. It can make for a difficult</p> <p>22 record.</p> <p>23 If there is something I ask you</p> <p>24 that you don't understand or you need to</p> <p>25 see something, please let me know and I</p>	<p style="text-align: right;">Page 12</p> <p>1 M. Rettig</p> <p>2 MR. WHITE: Can we stipulate</p> <p>3 that the witness is here in response</p> <p>4 to our deposition notices filed in the</p> <p>5 IPR's?</p> <p>6 MS. DONOVAN: That's fine.</p> <p>7 Q. What did you do to prepare for</p> <p>8 your deposition today?</p> <p>9 A. I communicated with counsel and</p> <p>10 collaborated on the generation of my</p> <p>11 declaration.</p> <p>12 Q. Other than your meetings with</p> <p>13 counsel, did you speak to anyone else?</p> <p>14 A. No.</p> <p>15 Q. At any time have you spoken with</p> <p>16 any of the other witnesses for Janssen?</p> <p>17 A. No.</p> <p>18 Q. Did you ever speak with</p> <p>19 Dr. Vellteuro?</p> <p>20 A. No.</p> <p>21 Q. Did you review any materials to</p> <p>22 prepare for your deposition today?</p> <p>23 A. Yes.</p> <p>24 Q. What did you review?</p> <p>25 MS. DONOVAN: I will caution the</p>
<p style="text-align: right;">Page 11</p> <p>1 M. Rettig</p> <p>2 will try to clarify the question or</p> <p>3 provide you materials to the extent I can.</p> <p>4 Understood?</p> <p>5 And you should try to give</p> <p>6 verbal answers and not head nods or other</p> <p>7 gesturing. The court reporter can't take</p> <p>8 that down.</p> <p>9 MS. DONOVAN: Before we continue</p> <p>10 further --</p> <p>11 THE VIDEOGRAPHER: Off the</p> <p>12 record at 9:14 a.m.</p> <p>13 (Pause.)</p> <p>14 THE VIDEOGRAPHER: Back on the</p> <p>15 record at approximately 9:15 a.m.,</p> <p>16 beginning of file C.</p> <p>17 BY MR. WHITE:</p> <p>18 Q. As we finish up the rules, if at</p> <p>19 any time you need a break, feel free to</p> <p>20 let me know and I am happy to take a</p> <p>21 break.</p> <p>22 Do you believe there is any</p> <p>23 reason you can't give honest and truthful</p> <p>24 testimony today?</p>	<p style="text-align: right;">Page 13</p> <p>1 M. Rettig</p> <p>2 witness, you may respond generally</p> <p>3 without disclosing the specifics of</p> <p>4 attorney-client privileged</p> <p>5 communications.</p> <p>6 A. I reviewed many of the exhibits</p> <p>7 related to this case.</p> <p>8 Q. Those are the materials that you</p> <p>9 cited in your declaration?</p> <p>10 A. Correct.</p> <p>11 Q. Did you review anything that you</p> <p>12 hadn't included in your declaration?</p> <p>13 MS. DONOVAN: You may answer</p> <p>14 that "yes" or "no."</p> <p>15 A. Not that I recall.</p> <p>16 Q. How much time did you spend in</p> <p>17 preparing the Mylan declaration?</p> <p>18 A. I don't have the exact number of</p> <p>19 hours, but many hours.</p> <p>20 Q. And that is many hours that were</p> <p>21 spent unique to the Mylan declaration and</p> <p>22 not as part of your work with the Amerigen</p> <p>23 case?</p> <p>24 A. Correct</p>

<p style="text-align: right;">Page 14</p> <p>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</p>	<p style="text-align: right;">Page 16</p> <p>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.</p>
<p style="text-align: right;">Page 15</p> <p>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</p>	<p style="text-align: right;">Page 17</p> <p>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</p>

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