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



	Christopher A.	April 3, 2017
	Page 2	Page 4
1	JOB NO.: 2587712	1 APPEARANCES: (Continued)
2	PAGES: 1 - 148	2
3	REPORTER: Donna M. Lewis, RPR, CSR (HI)	3 ON BEHALF OF PETITIONER WOCKHARDT BIO AG:
4		4 STERNE KESSLER GOLDSTEIN FOX
5		5 BY: CHRISTOPHER M. GALLO, Ph.D., ESQUIRE
6	Deposition of CHRISTOPHER A.	6 1100 New York Avenue, N.W.
7	VELLTURO,Ph.D, held at Sidley Austin, 1501	7 Washington, D C 20005
8	K Street, N.W., Washington, D C pursuant to	8 Telephone: (202) 772-8868
9	Notice, before Donna Marie Lewis, Registered	9 Email: cgallo@skgf.com
10	Professional Reporter and Notary Public of and for	10
11	the District of Columbia.	11 STERNE KESSLER GOLDSTEIN FOX
12		12 BY: KRISHAN THAKKER, ESQUIRE
13		13 1100 New York Avenue, N.W.
14		14 Washington, D C 20005
15		15 Telephone: (202) 772-8643
16		16 Email: kthakker@skgf.com
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18		18
19		19
20		20
21		21
22		22
	Page 3	Page 5
1	APPEARANCES	1 APPEARANCES: (Continued)
2	ON BEHALF OF PETITIONER MYLAN PHARMACEUTICALS	2
3	INC.:	3 ON BEHALF OF PATENT OWNER JANSSEN ONCOLOGY, INC.:
4	PERKINS COIE	4 SIDLEY AUSTIN, LLP
5	BY: ROBERT D. SWANSON, ESQUIRE	5 BY: PAUL J. ZEGGER, ESQUIRE
6	700 13th Street, N.W.	6 1501 K Street, N.W.
7	Suite 600	7 Washington, D C 20005
8	Washington, D C 20005	8 Telephone: (202) 736-8060
9	Telephone: (202) 654-1729	9 Email: pzegger@sidley.com
10	Email: RSwanson@perkinscoie.com	10
11		11 ALSO PRESENT:
12	PERKINS COIE	12 GRAHAM DAVIS, LEGAL VIDEOGRAPHER
13	BY: SHANNON M. BLOODWORTH, ESQUIRE	13
14	700 13th Street, N.W.	14
15	Suite 600	15
16	Washington, D C 20005	16
17	Telephone: (202) 654-6204	17
18	Email: SBloodworth@perkinscoie.com	18
19		19
20		20
21		21



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



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- 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:
- Q And if you could turn to paragraph 30 of
- 6 your report, Exhibit 2044. Let me know when you
- 7 are there?
- A Paragraph 30. Is that what you said?
- 9 Yes.
- 10 A I'm at paragraph 30.
- 11 Boehringer suspended its involvement
- 12 with abiraterone acetate development in 1999,
- 13 right?
- 14 A Yes. That's my recollection.
- Q And the first evidence that you present 15
- 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

Page 11

- 1 evidence between 1999 and 2002 that BTG was
- 2 actively trying to license the '213 Patent.
- 3 Correct?
- A I would have to see the Judson
- 5 declaration again.
- O Sure.
- 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.
- (Whereupon, Exhibit No. 2028 previously 19
- 20 marked was introduced.)
- THE WITNESS: 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.
- Q And so you don't have any evidence
- 7 between 1999 and 2002 specifically that BTG was
- actively trying to license the '213 Patent, right?
- 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.
- Q And there is no citation to any evidence 15
- 16 in paragraph seven of Exhibit 2028, is there?
- A I'm not a lawyer. Isn't this evidence?
- 18 This is an affidavit by a fact witness.
- 19 Sure. O
- 20 Α Okay.
- 21 But in paragraph seven of Exhibit 2028
- 22 Judson does not cite to any other document other

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- 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.
- 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:
- Q For any potential evidence before 2002 12
- 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 What's wrong with that characterization?
- 20 Well, I see that the Judson declaration
- 21 indicates that following 2000 efforts were

Page 14

- 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.
- 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?
- Page 15
- 1 A In part I rely on that statement, yes.
- 2 And then you don't find any evidence
- 3 that you cite of BTG trying to license the
- 4 '213 Patent until 2002. Correct?
- A Right. The -- the information that we
- 6 located through the Wayback Machine was from 2002. 6 involved with respect to this patent and this
- 7 I don't remember whether we looked for 2001 or
- 8 not. I just don't recall.
- Q So the only documentary evidence that
- 10 you cite -- the earliest -- I will start over.
- 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?
- 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

- 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?
- 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 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 Yes, I believe I have.
- 22 Is there a reason you don't list the
- Page 17
- 1 license on your list of materials considered in
- 2 appendix 8 of your declaration?
- 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
- - 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:
- And Exhibit 1088 is a printout from



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