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

MYLAN PHARMACEUTICALS, INC.,
Petitioner,

v.

JANSSEN ONCOLOGY, INC.
Patent Owner.

Case IPR2016-01332

Patent 8,822,438

and

WOCKHARDT BIO AG

Petitioner,

v.

JANSSEN ONCOLOGY, INC.
Patent Owner.

Case IPR2016-01582

Patent 8,822,438 B2

DEPOSITION OF

CHRISTOPHER A. VELLTURO, Ph.D

Wednesday, April 5, 2017

10:07 a.m.

Page 2

1 JOB NO.: 2587712
 2 PAGES: 1 - 148
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 6 Deposition of CHRISTOPHER A.
 7 VELLTURO, Ph.D, held at Sidley Austin, 1501
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<p style="text-align: right;">Page 10</p> <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</p>	<p style="text-align: right;">Page 12</p> <p>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</p>
<p style="text-align: right;">Page 11</p> <p>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.</p>	<p style="text-align: right;">Page 13</p> <p>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</p>

<p style="text-align: right;">Page 14</p> <p>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?</p>	<p style="text-align: right;">Page 16</p> <p>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</p>
<p style="text-align: right;">Page 15</p> <p>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</p>	<p style="text-align: right;">Page 17</p> <p>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 O And Exhibit 1088 is a printout from</p>

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