

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ACRUX DDS PTY LTD. & ACRUX LIMITED

Petitioners,

v.

KAKEN PHARMACEUTICAL CO., LTD. and

VALEANT PHARMACEUTICALS INTERNATIONAL, INC.

Patent Owner and Licensee.

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Case: IPR2017-00190

U.S. Patent No. 7,214,506

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**DECLARATION OF VINCENT A. THOMAS, CPA, CVA, CFF, ABV**

**Submitted August 1, 2017**

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## TABLE OF CONTENTS

I. EXPERIENCE AND CREDENTIALS .....	1
II. SCOPE OF ASSIGNMENT .....	2
III. INFORMATION REVIEWED AND RELIED UPON.....	3
IV. SUMMARY OF OPINIONS .....	4
V. ANALYSIS OF JUBLIA®'S SUCCESS IN THE MARKETPLACE.....	6
A. ONYCHOMYCOSIS.....	6
B. TREATING ONYCHOMYCOSIS.....	8
C. THE '506 PATENT .....	10
D. JUBLIA®.....	11
E. CAUSAL LINK OF JUBLIA®'S SUCCESS TO THE '506 PATENT.....	12

## I. EXPERIENCE AND CREDENTIALS

1. I am a Senior Managing Director in the Forensic & Litigation Consulting ("FLC") practice of FTI Consulting, Inc. ("FTI"), a multidisciplinary international financial advisory and consulting firm. I am a Co-Leader of FTI's Dispute Advisory Practice and I also lead FTI's National Intellectual Property Practice. Before joining FTI, I was a partner with the international professional services firm, KPMG, LLP.

2. I have significant experience assisting companies and clients with complex accounting, corporate finance and litigation issues. I focus on the preparation of sophisticated economic analyses and the assessment of damages in various types of commercial disputes. Over the course of my career, I have analyzed economic and financial issues in more than one hundred commercial disputes, many of which involved patent, copyright, trade secret, and trademark infringement. Many of those assignments have also involved complex economic analysis of commercial success of various products, sophisticated valuation analysis, and damages in matters involving various pharmaceutical products, biotechnology, and drug technologies. For the past three years I have been named by *Intellectual Asset Management* magazine as one of the world's leading patent damages experts.

3. I also have significant experience in corporate, financial, and accounting management positions, including a role as an Analyst and Director as well as Chief Financial Officer for a high-tech company, where I was responsible for managing its intellectual property portfolio. In that capacity, as well as during my consulting career, I have been involved in license negotiations, performing

royalty analysis, valuing intellectual property, and reviewing and analyzing license agreements.

4. I graduated *cum laude* from DePauw University with a Bachelor of Arts degree in Economics and I subsequently received a Masters of Business Administration degree from Indiana University. I am a Certified Public Accountant, Certified Valuation Analyst, and I am Certified in Financial Forensics and Accredited in Business Valuation. I am also a member of the American Institute of Certified Public Accountants and the National Association of Certified Valuation Analysts. **Appendix A** contains a summary of my education, experiences, prior testimony, and publications/seminars that I have authored. My business address is FTI Consulting, Inc., 227 W. Monroe Street, Suite 900, Chicago, Illinois 60606.

## II. SCOPE OF ASSIGNMENT

5. On November 2, 2016, Acrux DDS PTY Ltd. and Acrux Limited (collectively, “Acrux” or “Petitioners”) filed a petition with the Patent Trial and Appeal Board (“PTAB”) to institute an *inter partes* review of patent number 7,214,506 (the “’506 patent”).<sup>1</sup> The ’506 patent is owned by Kaken Pharmaceutical Co., Ltd. (“Kaken”) and it is licensed to Valeant Pharmaceuticals International, Inc. (“Valeant”) (collectively, “Patent Owners”). The PTAB instituted the *inter partes* review on May 1, 2017.<sup>2</sup>

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<sup>1</sup> Paper 01, Petition submitted November 2, 2016.

<sup>2</sup> Paper 12, Decision to Institute *Inter Partes* review, dated May 1, 2017.

6. It is my understanding that Acrux seeks to have the '506 patent invalidated as obvious over several combinations of alleged prior art references. I further understand that in the evaluation of obviousness, certain secondary considerations may be contemplated, such as commercial success, long-felt but unmet need, failure of others, and unexpected results. I have been retained by Finnegan Henderson Farabow Garret & Dunner, counsel for the Patent Owners ("Counsel"), to assess and provide opinions regarding secondary considerations relating to the '506 patent.

### **III. INFORMATION REVIEWED AND RELIED UPON**

7. During the course of my work in this matter, I have examined documents provided to me by Counsel and other information I have obtained from public sources. This report and the opinions and conclusions reached herein are based on my review of these documents as well as my knowledge, education, experience, and training. A listing of the specific documents I considered and reviewed is contained in the attached **Appendix B**.

8. My opinions contained herein are the results of my investigations to date. They are to be used for the specific purposes of this proceeding and are not to be used for any other purpose without the express written consent of FTI. I reserve the right to supplement, amend, or alter these opinions based on information that hereafter becomes available, including information that becomes available prior to and during the time this proceeding.

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