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

APOTEX INC., APOTEX CORP., ARGENTUM PHARMACEUTICALS
LLC, ACTAVIS ELIZABETH LLC, TEVA
PHARMACEUTICALS USA, INC., SUN PHARMACEUTICALS
INDUSTRIES LTD., SUN PHARMACEUTICAL INDUSTRIES,
INC., AND SUN PHARMA GLOBAL FZE,
Petitioners,
vs.
NOVARTIS A.G.,
Patent Owner.

IPR2017-00854
Patent No. 9,187,405

VIDEOTAPED DEPOSITION OF LESLIE Z. BENET, Ph.D.
San Francisco, California
Tuesday, March 13, 2018

REPORTED BY:
REBECCA L. ROMANO, RPR, CSR No. 12546

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<p>1 UNITED STATES PATENT AND TRADEMARK OFFICE</p> <p>2 BEFORE THE PATENT TRIAL AND APPEAL BOARD</p> <p>3 _____</p> <p>4 APOTEX INC., APOTEX CORP., ARGENTUM PHARMACEUTICALS LLC, ACTAVIS ELIZABETH LLC, TEVA</p> <p>5 PHARMACEUTICALS USA, INC., SUN PHARMACEUTICALS INDUSTRIES LTD., SUN PHARMACEUTICAL INDUSTRIES, INC., AND SUN PHARMA GLOBAL FZE,</p> <p>6 Petitioners,</p> <p>7 vs.</p> <p>8 NOVARTIS A.G.,</p> <p>9 Patent Owner.</p> <p>10 _____</p> <p>11 IPR2017-00854</p> <p>12 Patent No. 9,187,405</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 VIDEOTAPED DEPOSITION OF LESLIE Z. BENET, 18 Ph.D., taken on behalf of the Patent Owner, at 19 Wilson Sonsini Goodrich & Rosati, One Market Plaza, 20 Spear Tower, Suite 3300, San Francisco, California, 21 commencing at 9:38 a.m., March 13, 2018 before 22 Rebecca L. Romano, Certified Shorthand Reporter 23 No. 12546</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES OF COUNSEL (cont'd)</p> <p>2</p> <p>3</p> <p>4 ALSO PRESENT:</p> <p>5 Tyler Liu, Argentum Pharmaceuticals, LLC(via 6 telephone)</p> <p>7 Brandon Miller, Videographer</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 ////</p>														
Page 3	Page 5														
<p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 For the Petitioner - Apotex Inc., Apotex Corp.:</p> <p>4 WILSON SONSINI GOODRICH & ROSATI</p> <p>5 BY: JAD A. MILLS</p> <p>6 Attorney at Law</p> <p>7 701 Fifth Avenue</p> <p>8 Suite 5100</p> <p>9 Seattle, Washington 98104-7036</p> <p>10 (206) 883-2554</p> <p>11 jmills@wsgr.com</p> <p>12</p> <p>13 For the Patent Owner - Novartis A.G.:</p> <p>14 GIBSON, DUNN & CRUTCHER LLP</p> <p>15 BY: ROBERT W. TRENCHARD</p> <p>16 BY: JANE M. LOVE(via telephone)</p> <p>17 Attorneys at Law</p> <p>18 200 Park Avenue</p> <p>19 New York, New York 10166-0193</p> <p>20 (212) 351-4000</p> <p>21 rtrenchard@gibsondunn.com</p> <p>22 jlove@gibsondunn.com</p> <p>23</p> <p>24</p> <p>25 ////</p>	<p>1 I N D E X</p> <table border="0"> <tr> <td>2 DEPONENT</td> <td>EXAMINATION</td> </tr> <tr> <td>3 LESLIE Z. BENET, PH.D.</td> <td>PAGE</td> </tr> <tr> <td>5 BY MR. TRENCHARD</td> <td>9</td> </tr> <tr> <td>6 BY MR. MILLS</td> <td>56</td> </tr> </table> <p>7</p> <p>8</p> <p>9 PREVIOUSLY MARKED EXHIBITS</p> <table border="0"> <tr> <td>10 NUMBER</td> <td>PAGE</td> </tr> <tr> <td>11 Exhibit 1047</td> <td>21</td> </tr> <tr> <td>13 Exhibit 1048</td> <td>47</td> </tr> </table> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	2 DEPONENT	EXAMINATION	3 LESLIE Z. BENET, PH.D.	PAGE	5 BY MR. TRENCHARD	9	6 BY MR. MILLS	56	10 NUMBER	PAGE	11 Exhibit 1047	21	13 Exhibit 1048	47
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LESLIE Z. BENET

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<p>1 San Francisco, California; Tuesday, March 13, 2018</p> <p>2 9:38 a.m.</p> <p>3 ---o0o---</p> <p>4</p> <p>5 THE VIDEOGRAPHER: Good morning. We're</p> <p>6 going on the record at 9:38 a.m. on</p> <p>7 March 13th, 2018.</p> <p>8 Please note the microphones are</p> <p>9 sensitive, may pick up whispering, private</p> <p>10 conversations and cellular interference. Please</p> <p>11 silence all cell phones and place them away from</p> <p>12 the microphones as they interfere with deposition</p> <p>13 audio.</p> <p>14 Audio and video recording will continue</p> <p>15 to take place unless all parties agree to go off</p> <p>16 the record. This is media No. 1 of the</p> <p>17 video-recorded deposition of Dr. Leslie Benet --</p> <p>18 Benet.</p> <p>19 THE DEPONENT: Benet, but I'll go by</p> <p>20 either name.</p> <p>21 MR. TRENCHARD: That one's a more French</p> <p>22 name.</p> <p>23 THE VIDEOGRAPHER: In the matter of</p> <p>24 Apotex, Incorporated, et al., versus Novartis AG,</p> <p>25 filed in United States Patent and Trademark Office</p>	<p>1 phone?</p> <p>2 MR. LIU: Tyler Liu on behalf of</p> <p>3 Argentum Pharmaceuticals.</p> <p>4 THE VIDEOGRAPHER: Thank you. You may</p> <p>5 now swear in the witness.</p> <p>6 THE REPORTER: If you could raise your</p> <p>7 right hand for me, please.</p> <p>8 THE DEPONENT: (Complies.)</p> <p>9 THE REPORTER: You do solemnly state,</p> <p>10 under penalty of perjury, that the testimony you</p> <p>11 are about to give in this deposition, shall be the</p> <p>12 truth, the whole truth and nothing but the truth?</p> <p>13 THE DEPONENT: I do.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 before the Patent Trial and Appeal Board.</p> <p>2 Case No. IPR2017-00854.</p> <p>3 This deposition is being held at</p> <p>4 One Market Plaza, Spear Tower, Suite 3300,</p> <p>5 San Francisco, California.</p> <p>6 My name is Brandon Miller from</p> <p>7 Veritext Legal Solutions and I'm the videographer.</p> <p>8 The court reporter is Rebecca Romano from the firm</p> <p>9 of Veritext Legal Solutions.</p> <p>10 I'm not related to any parties in this</p> <p>11 action nor am I financially interested in the</p> <p>12 outcome.</p> <p>13 Counsel and all present in the room, and</p> <p>14 everyone attending remotely, will please state</p> <p>15 their appearances and affiliations for the record.</p> <p>16 MR. MILLS: This is Jad Mills with the</p> <p>17 law firm Wilson Sonsini Goodrich & Rosati</p> <p>18 representing Apotex, Inc., and Apotex Corp., and</p> <p>19 here with Dr. Benet.</p> <p>20 MR. TRENCHARD: Robert Trenchard from the</p> <p>21 law firm of Gibson Dunn & Crutcher. And with me on</p> <p>22 the phone is my partner, Dr. Jane Love, also with</p> <p>23 Gibson Dunn & Crutcher. We represent the patent</p> <p>24 owner, Novartis.</p> <p>25 THE VIDEOGRAPHER: Anyone else on the</p>	<p>1 LESLIE Z. BENET, Ph.D.,</p> <p>2 having been administered an oath, was examined and</p> <p>3 testified as follows:</p> <p>4</p> <p>5 EXAMINATION</p> <p>6 BY MR. TRENCHARD:</p> <p>7 Q. Good morning, Dr. Benet.</p> <p>8 A. Good morning.</p> <p>9 Q. Thank you very much for coming today.</p> <p>10 As you just heard, my name is</p> <p>11 Bob Trenchard. I'm with Gibson Dunn & Crutcher and</p> <p>12 I represent Novartis.</p> <p>13 You understand you're under oath today,</p> <p>14 of course?</p> <p>15 A. I do.</p> <p>16 Q. Is there anything that would interfere</p> <p>17 with your ability to give complete and truthful</p> <p>18 testimony today?</p> <p>19 A. No.</p> <p>20 Q. Okay. Are you on any medication that</p> <p>21 affects your memory or perception?</p> <p>22 A. I am not.</p> <p>23 Q. Okay. When was the last time you</p> <p>24 consumed alcohol?</p> <p>25 A. Last Saturday, lunch.</p>

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1 Q. The effects have clearly worn off by
 2 then?
 3 A. Maybe.
 4 Q. Okay. Fair enough.
 5 So we'll get to your experience in a
 6 second. I gather you've been through this drill
 7 several times before. But just for the sake of the
 8 record, allow me to make a few things clear.
 9 First, of course, your answers today must
 10 be verbal, in the form of words, rather than grunts
 11 or nods.
 12 Do you understand?
 13 A. I understand.
 14 Q. Thank you.
 15 We will try to take breaks probably every
 16 hour or so. If at any point you need a break, just
 17 let me know, and subject to maybe finishing a few
 18 questions, I'm happy to try to accommodate you.
 19 Okay?
 20 A. Thank you.
 21 Q. I'll be asking questions today. If you
 22 don't understand one of my questions, please don't
 23 hesitate to tell me and we'll work it out and try
 24 to figure out a way that you can understand.
 25 Okay?

Page 11

1 A. Thank you. Yes.
 2 Q. And, of course, if you -- if you don't
 3 tell me that there's some ambiguity or problem with
 4 my question, I'm going to assume that you do
 5 understand them. But as I said, we'll work through
 6 any complications with language along the way.
 7 Okay?
 8 A. I understand.
 9 Q. Okay. So I gather you have participated
 10 as an expert in other litigations before; is that
 11 right?
 12 A. That's correct.
 13 Q. And you've provided testimony in those
 14 other cases?
 15 A. I have.
 16 Q. Has that testimony been in the form of
 17 writing, such as a declaration or aff- --
 18 affidavit?
 19 A. Yes, it is.
 20 Q. Has it also been in the form of
 21 deposition testimony, like what we're doing right
 22 now?
 23 A. It has.
 24 Q. Have you testified live at trial before?
 25 A. I have.

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1 Q. Okay. So I'd like to just go through
 2 each of those categories a little bit, starting
 3 with the first one. And I'm asking you for an
 4 approximation because I realize that you've had a
 5 long career.
 6 Approximately how many times have you
 7 submitted written testimony in a case?
 8 A. Wow. Probably more than 150 times.
 9 Q. And have all of those always been as an
 10 expert?
 11 A. No. No.
 12 Q. So have you submitted written testimony
 13 as a direct witness on -- on occasion?
 14 A. Yes.
 15 Q. Okay. How many times have you done that?
 16 A. Once.
 17 Q. What sort of case was that?
 18 A. University issue with a professor.
 19 Q. Understood.
 20 Other than that one time, have all of
 21 your other instances of submitting written
 22 testimony been as an expert?
 23 A. Yes.
 24 Q. And that's an expert in pharmacology?
 25 A. Yes.

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1 Q. Have you submitted this written testimony
 2 in -- strike that.
 3 Do you have a -- strike that again.
 4 Do you know what courts or bodies the
 5 cases were pending in front of?
 6 A. Every.
 7 Q. Every.
 8 A. Every -- U.S. and Europe.
 9 Q. Fair enough.
 10 So U.S. state court proceedings?
 11 A. Yes.
 12 Q. U.S. federal court proceedings?
 13 A. Yes.
 14 Q. Proceedings in the patent office?
 15 A. Yes.
 16 Q. Proceedings in a European forum?
 17 A. Yes.
 18 Q. What sort of European forum?
 19 A. The -- equivalent to the -- what this --
 20 this patent type of process in Europe.
 21 Q. Does the term European opposition sound
 22 familiar?
 23 A. That's correct.
 24 Q. So it was in European oppositions?
 25 A. Yes.

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1 Q. And how many times have you submitted
 2 written testimony before the U.S. Patent Office?
 3 A. It's -- so let me clarify that. It's
 4 only for these type of procedures that we're doing
 5 today.
 6 Q. Let's just start more broadly and then
 7 we'll -- we'll narrow it down.
 8 So more broadly, how often have you
 9 submitted written testimony to the
 10 U.S. Patent Office?
 11 A. I'm not really sure because that -- I'm
 12 not really sure whether it did. I -- I know for
 13 sure this is the second U.S. case under this
 14 format.
 15 Q. By "this format," you mean an IPR?
 16 A. IPR, yes.
 17 Q. And what was the first one?
 18 A. It was Insys Pharmaceuticals versus
 19 GW Pharmaceuticals.
 20 Q. And when did you submit testimony in that
 21 case?
 22 A. Probably in May of last year.
 23 Q. And without going into any confidential
 24 information, could you just generally describe the
 25 subject matter of your testimony?

Page 15

1 A. It was a patent issue.
 2 Q. A patent issue.
 3 And you submitted that testimony as a
 4 pharmacology expert?
 5 A. I did.
 6 Q. Were you deposed in that case?
 7 A. I was.
 8 Q. Do you know if that case is still ongoing
 9 or has it been resolved?
 10 A. It's not settled.
 11 Q. It's not.
 12 Do you know it's been decided by the
 13 board yet?
 14 A. I believe it has not been decided.
 15 Q. How many European patent office
 16 proceedings have you submitted testimony?
 17 A. Three or four.
 18 Q. And, again, that was as an expert in
 19 pharmacology?
 20 A. Initially, it was from my own patents,
 21 but more recently as an expert.
 22 Q. You own a number of U.S. patents as well;
 23 is that right?
 24 A. That's correct.
 25 Q. Did you submit any written testimony in

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1 connection with the acquisition of those patents?
 2 A. In U.S.?
 3 Q. In the U.S.
 4 A. Not that I recall.
 5 Q. Do you recall submitting any declarations
 6 to the patent office in connection with acquiring
 7 those patents?
 8 A. I -- I don't recall. It's a long time
 9 ago.
 10 Q. Fair enough.
 11 So just returning to federal district
 12 court, federal court, how often have you submitted
 13 written testimony in district court?
 14 Again, I'm asking for approximations. I
 15 do appreciate it's a long time.
 16 A. It's really hard for me to -- to -- state
 17 versus federal. I -- I -- I don't know.
 18 Q. Fair enough.
 19 How many patent cases outside of the
 20 patent office, in Europe or the United States, have
 21 you submitted testimony?
 22 A. Several times. Approximately 150, I
 23 would say 140 are patent issues.
 24 Q. And what are the other nine, other than
 25 that one that was a university issue?

Page 17

1 A. Well, there are some -- well, actually,
 2 the number should be a little lower. 130 maybe,
 3 because of -- personal injury type of expert.
 4 Q. Was that -- what -- medical malpractice
 5 type cases?
 6 A. No, this was product.
 7 Q. Product liability?
 8 A. Product liability.
 9 Q. Understood. Thank you.
 10 So focusing on the one other IPR in which
 11 you submitted testimony -- you said you were
 12 deposed in that case; is that right?
 13 A. I was.
 14 Q. How many declarations did you submit in
 15 that?
 16 A. This is the same case as Europe, so it
 17 gets -- it gets complicated.
 18 I think in the U.S. only one.
 19 Q. And so you -- were you deposed only once
 20 in that case?
 21 A. Yes.
 22 Q. And who were you working for in that --
 23 sorry -- who has retained you in that case?
 24 A. Insys Pharmaceuticals.
 25 Q. Who was counsel for Insys?

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