

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS, LLC

Petitioner

v.

ALCON RESEARCH LIMITED

Patent Owner

U.S. Patent No. 8,268,299

Inter Partes Review Case No. IPR 2017-01053

SECOND DECLARATION OF ERNING XIA, Ph.D.

Exhibit 1093

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I, Erning Xia, Ph.D., hereby declare as follows.

I. Introduction

1. I am over the age of eighteen (18) and otherwise competent to make this declaration.

2. I have been retained as an expert witness on behalf of ARGENTUM PHARMACEUTICALS, LLC., (“ARGENTUM”) for the above-captioned *inter partes* review (“IPR”). I am being compensated for my time by the hour in preparing this declaration, but my compensation is not tied to the outcome of this matter.

3. I understand that this Declaration accompanies Petitioner’s Reply to Patent Owner’s Response for IPR2017-01053, an IPR involving U.S. Patent No. 8,268,299 (“the ’299 patent”), Ex. 1001, which resulted from U.S. Application No. 11/858,781 (“the ’781 application”), filed on September 20, 2007, and alleging an earliest priority date of September 21, 2006. I further understand that, according to the United States Patent and Trademark Office (“USPTO”) records, the ’299 patent is currently assigned to Alcon Research Limited (“Alcon” or “the patentee”).

4. In preparing this Declaration, I have reviewed the ’299 patent and considered each of the documents cited herein, in light of general knowledge in the art. In formulating my opinions, I have relied upon my experience, education

and knowledge in the relevant art. In formulating my opinions, I have also considered the viewpoint of a person of ordinary skill in the art (“POSA”), *i.e.*, a person of ordinary skill in the field of ophthalmic drug formulations and antimicrobial preservation of such compositions. Throughout this declaration, in rendering my opinion, I have considered what the viewpoint of a POSA would have been prior to September 21, 2006, the filing date of U.S. Provisional Patent Application No. 60/826,529, to which the challenged ’299 patent claims priority.

II. My Background and Qualifications

5. My background and qualifications are essentially the same as set forth in my first Declaration: EX1002 ¶¶6-13.

III. List of Documents I Considered in Formulating My Opinion

6. In formulating my opinion, I have considered Dr. Majumdar’s and Dr. Zhanel’s declarations, relevant documents cited therein, and the documents cited herein.

IV. Person of Ordinary Skill in the Art

8. My understanding of a person of ordinary skill in the art (“POSA”) remains unchanged from my first declaration. EX1002 15-18. A POSA is presumed aware of all pertinent art and is a person of ordinary creativity. *Id.* I further understand that a POSA would consider a reference for all it discloses or suggests, whether expressly spelled out or not, and would not look only to

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