

Transcript of Conference Call

Date: June 19, 2018 Case: Pfizer, Inc. -v- Genentech, Inc. (PTAB)

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Pfizer v. Genentech IPR2017-01488 Genentech Exhibit 2060

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Transcript of Conference Call Conducted on June 19, 2018

1 3 UNITED STATES PATENT AND TRADEMARK OFFICE APPEARANCES BEFORE THE PATENT TRIAL AND APPEAL BOARD BEFORE JUDGE POLLOCK AND JUDGE YANG 3 FOR THE PETITIONER: ---000----4 PFIZER, INC., 5 KTRKLAND & FLLTS Petitioner, BY: BENJAMIN LASKY, ESQ. 6 vs. : Nos. IPR2017-01488 : IPR2017-01489 7 601 Lexington Avenue New York, New York 10022 8 GENENTECH, INC., ٩ Patent Owner. 10 10 FOR THE PATENT OWNER: 11 11 12 12 WILMER, CUTLER, PICKERING, HALE & DORR, LLP 13 13 BY: ROBERT J. GUNTHER, JR., ESQ. 14 14 ANDREW J. DANFORD, ESQ. 15 TELEPHONIC HEARING 15 KEITH SYVERSON, ESO. 16 June 19, 2018 16 7 World Trade Center 17 17 250 Greenwich Street 18 18 New York, New York 10007 19 Job No.:195342 19 20 Pages: 20 21 Reported by: Laura Axelsen, CSR 6173 21 ---000---22 22 23 23 24 24 25 25 2 4 JUDGE POLLOCK: IPR 20170488 and IPR 20701374. UNITED STATES PATENT AND TRADEMARK OFFICE 1 BEFORE THE PATENT TRIAL AND APPEAL BOARD 2 I'm Judge Pollock. Judge Yang is on the line. Who do BEFORE JUDGE POLLOCK AND JUDGE YANG we have on the line for Patent Owner Genentech? 3 ---000----4 MR. GUNTHER: Good morning, Judge Pollock. PFIZER, INC., 5 Bob Gunther on the line. With me is Andrew Danford and Petitioner, Keith Syverson. We're all from the Wilmer Hale firm. 6 . : Nos. IPR2017-01488 : IPR2017-01489 vs. 7 JUDGE POLLOCK: Good morning. Who do we have 8 on the phone for petitioner? GENENTECH, INC., Patent Owner. 9 MR. LASKY: Good morning. This is Benjamin 10 10 Lasky from Kirkland & Ellis for the petitioner. 11 11 JUDGE POLLOCK: Are there any other parties? 12 12 THE REPORTER: This is the court reporter. 13 13 JUDGE POLLOCK: Okay. Who retained the court 14 --000--14 reporter? 15 BE IT REMEMBERED THAT, on Tuesday, June 19, 2018 15 MR. GUNTHER: This is Bob Gunther. The patent 16 at June 19, 2019 thereof, at 1:01 p.m., telephonically, 16 owner retained the court reporter, and with your 17 with the Certified Shorthand Reporter being in Vacaville, California, before me, LAURA AXELSEN, a 17 permission, we'll file the transcript as an exhibit. 18 JUDGE POLLOCK: That would be excellent. I 19 Certified Shorthand Reporter, the following proceedings 18 20 were had: 19 understand that patent owner seeks authorization to file 21 ---000----20 a motion to strike relating to certain arguments, 22 21 Pfizer's May 25th, 2020 reply brief. Yesterday we 23 22 entertained a conference call where the petitioner, 24 23 Celltrion, raised similar challenges to the same patent 25 24 at issue here. 25 Mr. Gunther, is this the same issue you wish

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1to discuss with respect to the IPR 20170488 and IPR220701374?3MR. GUNTHER: Yes, your Honor, it is, and what4I would say is in addition to the argument relating to5the 1989 Foote paper, which is Exhibit 1193, that's the6issue that we had discussed yesterday with respect to7Celltrion. We also have a second point that where we8believe that, uhm, Pfizer has also injected a new9argument relating to the call reference.10And so what we're requesting, uhm, similar to11was ordered yesterday is the ability to file a1210 page motion to strike in connection on Friday at13the same time that we filed our motion to exclude and to14be able to cover both of those grounds and, Judge15Pollock, I'm happy to speak to both of those grounds, if16that's appropriate.17JUDGE POLLOCK: Yes, please. Before we18continue, Judge Yang informs me that I have been getting19one of the case names wrong. So this is in relation to20So ure position is that with respect - and I'll start with21MR. GUNTHER: Thank you, Judge Pollock. So22MR. GUNTHER: Thank you, Judge Pollock. So23our position is trik to m terspect to a24the Foote reference, that our request with respect to a25motion to strike on the Foote reference really is very26bein put the foote reference really is very26bein put the size ontinue, Mr. Gunther.22 <th></th> <th>,</th>		,
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1 Celltrion, that they can cabin the Foote reference to	 sort of makes clear that shifting arguments in this fashion is foreclosed by the statute are precedent in
2 only secondary considerations, I think that's difficult 2 in view of the in view of the federal circuit access	•
3 in view of the in view of the federal circuit cases,	3 the Board's guidelines.4 So for that reason we would ask to have the
4 including the, uhm, Cyclobenzaprine case, and in	
5 addition, uhm, I think that the notion that that it	5 ability to file a motion to strike with respect to the
6 can be cabined is inconsistent with the extensive use of	6 use of the Kurrle reference as prior art to the
7 footnote 1989 throughout Dr. Foote's reply declaration.	7 consensus sequence claims.
8 So for those reasons we would ask that we have	8 JUDGE POLLOCK: All right. Mr. Lasky?
9 a right to file a motion to strike with respect to the	9 MR. LASKY: Thank you, your Honor. Uhm, let
10 Foote reference. Now I'll stop and see if your Honor	10 me address the I guess the Foote it's been called
11 your Honors have any questions, but I do have the Kurrle	11 the Foote issue, but if if one really looks at what
12 thing that I want to pick up before we finish.	12 they are asking for here, this is not really about the
13 JUDGE POLLOCK: No questions about your	13 Foote reference. It's about evidence that the Campath
14 position on Foote. Let's talk about Kurrle.	14 antibody that is described in the Reichmann publication,
15 MR. GUNTHER: Okay. So here's the situation	15 which was relied on explicitly in the petition as
16 with Kurrle. Uhm, in the petition, in their petition,	16 showing state of the art, that that used a consensus
17 they did not reference the Kurrle reference or use the	17 sequence for the light chain.
18 Kurrle reference as disclosing the consensus sequence	18 That's what they don't want you to hear, uhm,
19 limitations of the consensus sequence claims. The first	19 at the at the upcoming hearing. Now, uhm, although
20 time that came up is in their reply, and, for example,	20 Mr. Gunther said that, uhm, that, uhm, you know, this
21 on the 1488 reply brief, and this is the first time we	21 issue is stronger with respect to Pfizer, with respect,
22 saw this was at pages 616 and 17.	22 I have read the transcript from yesterday's hearing,
23 In their petitions, Pfizer argued that the	23 uhm, and, you know, acknowledging that the Board, your
24 consensus and I mentioned this before that the	24 Honors, granted the request with respect to Celltrion,
25 consensus sequence limitation was met by queen 1990.	25 there are several key factors that Mr. Gunther omitted
1 They didn't say anything about Kurrle with respect to	1 that we think push the close call that your Honors found
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13	1. the noticing discussed in the noticing and therefore
1 which he introduced in paragraph 103, and he explained	1 the petition, discussed in the petition, and, therefore,
2 that the sequence in Campath was taken from his own	2 squarely within these proceedings, even if it weren't,
3 anti-lysozyme construct, which was in the Foote	3 this argument and this evidence is directly responsive
4 reference, Exhibit 1193, and that Foote reference was	4 to to the, uhm, position, the factually incorrect
5 introduced during the redirect at the deposition.	5 position, that Genentech and its expert have taken, and
6 And all of the evidence that he's that is	6 what they want to do is they want to create a misleading
7 being relied upon now, that Dr. Foote is relying upon	7 picture of the state of the art and not let us correct
8 now, was presented during that, uhm, deposition, which	8 that, and we think that's inappropriate, not only
9 happened before the patent owner response occurred and	9 because
10 before, uhm, Genentech put in its evidence, and you,	10 JUDGE POLLOCK: argument, Mr. Lasky. Why
11 know, its expert declaration.	11 don't you tell me about Kurrle?
12 So that is the first key distinction from the	12 MR. LASKY: With respect to Kurrle, again,
13 Celltrion case addressed yesterday. Another key	13 Mr. Gunther did not point out the, uhm, discussion in
14 distinction is how, uhm, it is the that evidence is	14 the petition and in the Foote declaration regarding
15 being relied upon, uhm, in the reply. Now, uhm,	15 Kurrle. Uhm, if one looks at page 20 of the 1488
16 Mr. Gunther did not take you to pages 15 to 17 of the	16 petition, which is where we described Kurrle, the
17 reply in his discussion of the Foote reference, and	17 petition makes clear that Kurrle teaches the human
18 you'll see, if you go to the those pages, that that is	18 framework residues could be switched to consensus
19 where the consensus variable domain limitation is	19 sequence residues, according to the method in that
20 described in the obviousness analysis. And that is	20 reference, and that was supported by Dr. Foote, and
21 consistent with the petition, where we are arguing that	21 and he described that, uhm, in his opening declaration,
22 Queen 1990 discloses that limitation, and the Foote	22 Exhibit 1003, at paragraph 123.
23 reference is not mentioned.	23 Now, this again, it's not this isn't a
24 If you then go to page 27, which is where	24 case where we're switching reliance on Queen 1990 for
25 Mr. Gunther took you to, what he didn't explain is the	25 Kurrle. We're not seeking to do that. The ground is
14	16
1 context in which that evidence is being placed, and that	1 Queen 1990 for these claims, but what what Genentech
2 is this: In the patent owner response and in the	2 and its expert did in response is they said that the
3 supporting expert declaration, Genentech argues that its	3 the consensus approach that they claim to have invented
4 consensus approach, which it claims to have invented,	4 is fundamentally different and has advantages over the
5 was particularly advantageous, and in particular that it	5 very best fit approach, and what we're doing and what
6 was less immunogenic than the Campath antibody in	6 our expert is doing is pointing out that there is no
7 Reichmann, and which they say was a best fit, uhm,	7 fundamental difference between those approaches, and
8 approach rather than a consensus approach.	8 they, uhm, they can and do sometimes lead to the same
9 That is simply wrong and and and we	9 results. And that is shown in Kurrle where all the
10 should be entitled to point out that it's wrong. As we	10 difference where Kurrle started with the best fit,
11 note on page 27, as Dr. Foote mentioned in his opening	11 looked at the differences between the best fit sequence
12 declaration, as he mentioned at his deposition, as was	12 and the consensus, and changed all of those to mouse.
13 acknowledged during prosecution of the patent, which	13 JUDGE POLLOCK: You talked about Kurrle being
14 they also want to strike, the applicants knew the	14 cited in the 1488 petition. Where is it in the 1489?
15 Campath was made using Dr. Foote's consensus sequence.	15 MR. LASKY: Well, Kurrle Kurrle is not
16 So this is not a case where we are saying,	16 at is not a reference in the 1489 petition. It is
17 okay, we're giving up on Queen 1990. We're changing to	17 it is an exhibit, but it's not a reference that we've
18 Foote, as Mr. Gunther represented. What we're pointing	18 relied upon as a ground, uhm, but, again, the reliance
19 out is, uhm, Genentech and its expert are factually	19 here is responsive to the very same argument that
20 incorrect when they try to compare their approach with	20 they've raised in the, uhm, 1489 petition, which is that
21 the Reichmann approach. And we couldn't have known they	21 the best-fit approach by Queen, which is in the ground
22 were going to try to do that in the petition. So we	22 in both petitions, is fundamentally different from
23 couldn't have rebutted that in our discussion of	23 consensus.
24 unexpected results.	24 JUDGE POLLOCK: What does Dr. Kurrle say about
25 This is even even though it is mentioned in	25 the Kurrle reference in the 1489 case

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