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Transcript of Timothy Buss

Date: February 8, 2018

Case: Pfizer, Inc. -v- Genentech, Inc. (PTAB)

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<p>5</p> <p>1 VIDEO DEPOSITION OF TIMOTHY BUSS, taken on behalf 2 of The Patent Owner, at 2137 Pacific Highway, San Diego, 3 California, commencing on Thursday, February 8, 2018, at 4 8:49 a.m., before Margaret A. Smith, Certified Shorthand 5 Reporter, CSR No. 9733, RPR, CRR. 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>7</p> <p>1 firm. 2 3 TIMOTHY BUSS, 4 having been first duly sworn, was examined and testified 5 as follows: 6 7 EXAMINATION 8 BY MR. GUNTHER: 9 Q Good morning, Mr. Buss. 10 A Good morning. 11 Q Have you been deposed before? 12 A No. 13 Q Okay. So this is your first time? 14 A It is my first time. 15 Q Okay. And have you ever acted as an ex- -- 16 expert witness in a litigation matter prior to today? 17 A No. 18 Q Okay. Now, I'd like to ask you when you were 19 first retained for this matter. 20 A I don't recall precisely, but it would have 21 been at least a year ago -- 22 Q Okay. 23 A -- possibly more. 24 Q All right. And when you were retained, who 25 were you retained by?</p>
<p>6</p> <p>1 San Diego, California; February 8, 2018; 8:49 a.m. 2 3 VIDEOGRAPHER: Good morning. We are on the 4 record. This is the videotaped deposition of Timothy 5 Buss, taken in the matter of Hospira, Inc., versus 6 Genentech, Inc. It's a U.S. Patent Office case 7 IPR2017-01488 and 89. 8 Today's date is Thursday, February 8th, 2018, 9 and the time is 8:49 a.m. 10 My name is Christian Teare, a legal video 11 specialist, representing Planet Depos. 12 This video deposition is taking place at the 13 Hilton Garden Inn, 2137, Pacific Highway, in San Diego, 14 California. The certified shorthand reporter is Maggie 15 Smith with Planet Depos. 16 If counsel would please state their 17 appearances, the reporter will swear in the witness. 18 MR. LASKY: My name is Benjamin Lasky from 19 Kirkland & Ellis for Pfizer, Inc., and the witness. And 20 just for the record, the petitioner in these IPRs is 21 Pfizer, not Hospira. 22 With me today from Kirkland and Ellis is Karen 23 Younkins, and from Pfizer, Wendy Hsu, H-s-u. 24 MR. GUNTHER: And for the patent owner, 25 Genentech, Bob Gunther and Andrew Le of the WilmerHale</p>	<p>8</p> <p>1 A I was contacted by Kirkland and Ellis. 2 Q Okay. And is your agreement with Kirkland and 3 Ellis, or with Pfizer? 4 A With Kirkland and Ellis. 5 Q Okay. And -- and who first contacted you in 6 terms of your retention in this matter? 7 A You know, I can't recall. It might have been 8 Stefan. Yeah, I don't actually recall. 9 Q Okay. 10 A I spoke with several different people at 11 Kirkland and Ellis. 12 Q Did -- to your knowledge, did Dr. Foote suggest 13 that you be an expert in this case? 14 A Not to my knowledge. 15 Q Okay. Do you know how it came to be that you 16 became a candidate to be an expert in this matter? 17 A No, I don't know that. 18 Q Okay. Now, when you were retained, can you 19 tell me about how -- well, let me do this. Let me -- 20 let me mark your declarations, hand you your 21 declarations. They have already been marked. 22 A Thank you. 23 Q So I -- we're handing you two documents -- the 24 first is a document that has previously been marked as 25 Pfizer Exhibit 1004, which is your declaration in the</p>

9

1 with 1488 IPR.
2 And I'd ask you to take a look at that and just
3 confirm for me that that is in fact your declaration in
4 this matter.
5 **A Yeah.**
6 Q All right. And if you look at the last page,
7 page 40 --
8 **A Yes.**
9 Q -- that's your signature, and it indicates that
10 you -- you executed the report on May 22nd, 2017.
11 Correct?
12 **A Yes.**
13 Q Okay. Now, as you sit here today, is there
14 anything that you'd like to correct or -- or change in
15 connection with your declaration?
16 **A No, there isn't.**
17 Q Okay. Can you tell me approximately -- using
18 May 22, 2017 as the sort of end date, the date that you
19 actually signed the declaration. Can you tell me,
20 backing up from there approximately how many months
21 before that you were retained.
22 **A I honestly can't recall.**
23 Q Okay. And when you were retained, were you
24 informed -- strike that.
25 When you were retained, did you learn that

10

1 Mylan had previously filed an IPR preceding against the
2 '213 patent?
3 **A Yes, I knew that.**
4 Q Okay. And were you provided certain papers
5 with respect to the Mylan IPR?
6 **A I believe what I was presented with -- with was**
7 **the declaration that was submitted by Dr. Ball.**
8 Q By Dr. Ball?
9 **A Yeah.**
10 Q Okay. And do you -- do you recall were you
11 giving any other papers from the Mylan IPR?
12 **A I do not believe so.**
13 Q Okay. And prior to receiving Dr. Ball's
14 declaration, were you asked to -- to independently form
15 any opinions with respect to the validity or invalidity
16 of the '213 patent?
17 **A No.**
18 Q Okay. So you started -- your starting point --
19 is it fair to say that your starting point was
20 Dr. Ball's declaration?
21 **A Yes.**
22 Q Okay. Were you given a Word version of that
23 declaration?
24 **A I believe so.**
25 Q Okay. And then did you edit it?

11

1 **A I did.**
2 Q Okay. And did you -- were you given copies of
3 the references that are cited in the Ball declaration?
4 **A I was.**
5 Q Okay. And did you read each one of those --
6 **A I --**
7 Q -- prior -- just, I'm sorry. I -- and I'm not
8 great at this either. It's one of my faults. I'll try
9 not to step on you if you try not to step on me, okay,
10 in terms of speaking.
11 **A Sure.**
12 Q So -- so in terms of the exhibit, the
13 references that are cited in Dr. Ball's declaration, you
14 were given copies of those. Correct?
15 **A I was.**
16 Q And prior to signing your declaration on
17 May 22, 2017, you reviewed those. Correct?
18 **A Yes.**
19 Q Okay. Now, let me just -- so we have them both
20 in front of us -- mark as exhibit -- show you what has
21 been previously marked as Pfizer Exhibit 1504. And this
22 is your declaration in the 1489 IPR. And my question
23 is -- my question, frankly, is whether you can confirm
24 that this is in fact your declaration in the second IPR
25 that was also executed on May 22, 2017.

12

1 **A Yes.**
2 Q Okay. And that's your signature, again, on
3 page 40 of the declaration --
4 **A Yes.**
5 Q -- correct? All right.
6 And is there anything -- look -- focusing on
7 Exhibit 1504, is there anything that you would want to
8 correct or change with respect to that declaration?
9 **A No.**
10 Q Okay. And, sir, in terms of Dr. Ball's
11 declaration, you utilized some -- some of the language
12 from that declaration. Correct?
13 **A I utilized most of the language.**
14 Q Okay. And in your declaration of
15 paragraph 13 -- and let's use the -- the 1004
16 declaration, just so that you and I are on the -- on the
17 same document.
18 In paragraph 13, your declaration, you say --
19 this is about three quarters of the way down the
20 paragraph. "Readers of this declaration may note the
21 language and organization is similar to that of
22 Dr. Ball's declaration because it did not seem a
23 necessary expenditure of resources to rewrite the
24 material which I independently confirmed as" --
25 accepting -- "acceptable and correct." Right?

<p>13</p> <p>1 A Yes.</p> <p>2 Q Okay. All right. And you stand by that</p> <p>3 statement. Right?</p> <p>4 A Yes.</p> <p>5 Q And as a matter of fact -- well, we'll come</p> <p>6 back to it. So your -- your process in terms of the</p> <p>7 work that you did in connection with this case is that</p> <p>8 you were -- after you were retained, you were given</p> <p>9 Dr. Ball's declaration as a Word document, you were</p> <p>10 given the documents cited in that declaration, you</p> <p>11 reviewed Dr. Ball's declaration in those documents, and</p> <p>12 wherever you agreed with Dr. Ball, you basically just</p> <p>13 left the text as is. Correct?</p> <p>14 A Yes. I did adjust the text in places just</p> <p>15 where I thought it could be made a little bit clearer.</p> <p>16 Q Okay.</p> <p>17 A A little bit less ambiguous.</p> <p>18 Q Okay. But for the most part -- so, for</p> <p>19 example, obviously, in terms of the background section,</p> <p>20 you had to change that because you -- you're talking</p> <p>21 about your background --</p> <p>22 A Yes.</p> <p>23 Q -- not his. Right?</p> <p>24 A Yes.</p> <p>25 Q And in terms of -- you made some changes. And</p>	<p>15</p> <p>1 Q Okay. So it's fair to say you relied entirely</p> <p>2 in terms of your declaration on -- on literature that</p> <p>3 was presented in Dr. Ball's declaration. Correct?</p> <p>4 MR. LASKY: Objection to the form.</p> <p>5 BY MR. GUNTHER:</p> <p>6 Q You can answer.</p> <p>7 A Yes.</p> <p>8 Q Okay. Now, you know that Dr. Foote has also</p> <p>9 submitted a declaration in these IPR proceedings.</p> <p>10 Right?</p> <p>11 A Yes.</p> <p>12 Q And -- and you are -- you know him from --</p> <p>13 prior to this case. Correct?</p> <p>14 A Correct.</p> <p>15 Q In fact, you were colleagues at -- in</p> <p>16 Dr. Winters' lab. Right?</p> <p>17 A Yes.</p> <p>18 Q And you were also colleagues in Dr. Foote's lab</p> <p>19 at Hutchison. Correct?</p> <p>20 A Yes.</p> <p>21 Q How long have you known Dr. Foote?</p> <p>22 A Since 1991.</p> <p>23 Q Okay. And how long -- how many years have you</p> <p>24 actually worked with him as a colleague?</p> <p>25 A Approximately 12.</p>
<p>14</p> <p>1 we'll go -- we'll talk about this in terms of the person</p> <p>2 of ordinary skill in the art. Correct?</p> <p>3 A Yes.</p> <p>4 Q But then in terms of the actual substance of</p> <p>5 the declaration, in terms of the substantive paragraphs</p> <p>6 and the references that were cited, most of that, you</p> <p>7 left unchanged in -- in terms of Dr. Ball's declaration</p> <p>8 and used his -- his language. Correct?</p> <p>9 A Correct.</p> <p>10 Q Okay. Did you ever talk to Dr. Ball?</p> <p>11 A No.</p> <p>12 Q Did you ever ask to talk to Dr. Ball?</p> <p>13 A No.</p> <p>14 Q Do you know who he is?</p> <p>15 A No.</p> <p>16 Q Okay. Had you ever heard of him --</p> <p>17 A No.</p> <p>18 Q -- prior to this case? Okay.</p> <p>19 Did you do what -- attempt to do any diligence</p> <p>20 to determine his reputation in the field?</p> <p>21 A No, I didn't.</p> <p>22 Q Have you performed any of your own search of</p> <p>23 the literature in connection with any of the work that</p> <p>24 you've done in this matter?</p> <p>25 A No.</p>	<p>16</p> <p>1 Q Okay. And in fact you list Dr. Foote as a</p> <p>2 personal reference on your C.V. Correct?</p> <p>3 A Yes.</p> <p>4 Q Do you -- do you view him as a mentor?</p> <p>5 A Yes. I've learned a lot while working in his</p> <p>6 lab.</p> <p>7 Q Okay. And do you know whether he had any --</p> <p>8 anything to do with you being involved in this case?</p> <p>9 MR. LASKY: Objection. Asked and answered.</p> <p>10 BY MR. GUNTHER:</p> <p>11 Q And if I asked that, I apologize, but indulge</p> <p>12 me on this one. Can you answer it again.</p> <p>13 A Yeah. I have no knowledge.</p> <p>14 Q Okay. Have you spoken to Dr. Foote in</p> <p>15 connection with your work on this case?</p> <p>16 A Yes.</p> <p>17 Q Okay. And tell -- can you tell me how many</p> <p>18 times you've spoken with him in connection with your</p> <p>19 work on this case.</p> <p>20 A Once.</p> <p>21 Q All right. When -- and when was that?</p> <p>22 A That was when we were determining the -- the --</p> <p>23 who would be ordinary -- ordinary skilled in the art --</p> <p>24 Q Okay.</p> <p>25 A -- definitions.</p>

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