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Transcript of Jefferson Foote, Ph.D.

Date: February 4, 2018

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

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<p>1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD 3 ----- 4 5 PFIZER, INC., 6 Petitioner, Case No.: 7 IPR2017-01488 8 -vs- IPR2017-01489 9 GENENTECH, INC., 10 Patent Owner. 11 ----- 12 13 Deposition of JEFFERSON FOOTE, Ph.D. 14 San Diego, California 15 Sunday, February 4, 2018 16 8:59 a.m. 17 18 19 20 21 22 Job No.: 174277 23 Pages: 1 - 365 24 Reported by: Tricia Rosate, RDR, RMR, CRR 25 CSR No. 10891</p>	<p>1 A P P E A R A N C E S 2 ON BEHALF OF THE PETITIONER: 3 BENJAMIN LASKY, ESQ. 4 MARK C. McLENNAN, ESQ. 5 KIRKLAND & ELLIS, LLP 6 601 Lexington Avenue 7 New York, New York 10022 8 (212) 446-4800 9 blasky@kirkland.com 10 mark.mclennan@kirkland.com 11 12 ON BEHALF OF THE PATENT OWNER: 13 ROBERT J. GUNTHER, JR., ESQ. 14 ANDREW H. LE, ESQ. 15 WILMER CUTLER PICKERING HALE and DORR, LLP 16 7 World Trade Center 17 250 Greenwich Street 18 New York, New York 10007 19 (212) 230-8830 20 robert.gunther@wilmerhale.com 21 andrew.le@wilmerhale.com 22 23 ALSO PRESENT: 24 RYAN LaFOND, The Videographer 25 WENDY HSU, Pfizer</p>
<p>1 Deposition OF JEFFERSON FOOTE, Ph.D., held at: 2 Hilton Garden Inn Bayside 3 2137 Pacific Highway, Suite A 4 Ivy Room 5 San Diego, California 92101 6 7 8 Pursuant to Notice, before Tricia Rosate, RDR, 9 RMR, CRR, CRR, Certified Shorthand Reporter No. 10 10891 in and for the State of California. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 C O N T E N T S 2 EXAMINATION OF JEFFERSON FOOTE, Ph.D. PAGE 3 By Mr. Gunther 6, 348, 361 4 By Mr. Lasky 312, 354 5 6 E X H I B I T S 7 (Attached to transcript) 8 EXHIBIT DESCRIPTION PAGE 9 Exhibit 1193 "Functional and Regulatory Aspects of Enzyme Action" 328 10 Exhibit 2051 "Chimeric and Humanized Antibodies With Specificity For the CD33 Antigen" 129 11 Exhibit 2052 Excerpted portion of trial transcript 140 12 Exhibit 2053 "Therapeutic Antibodies For Human Disease At The Dawn Of The Twenty-First Century" 164 13 Exhibit 2054 "Monoclonal Antibodies in Diagnosis and Therapy" 169 14 Exhibit 2055 "Anti-body Based Therapy, Humanized antibodies" 185 15 16 PREVIOUSLY MARKED EXHIBITS 17 Exhibit 1001 Exhibit 1034 18 Exhibit 1003 Exhibit 1050 19 Exhibit 1033 Exhibit 1071 20 21 22 23 24 25</p>

<p style="text-align: center;">5</p> <p>1 SAN DIEGO, CALIFORNIA; SUNDAY, FEBRUARY 4, 2018 2 8:59 A.M. - 6:24 P.M. 3 - - - - 4 THE VIDEOGRAPHER: Good morning. Here 5 begins Media No. 1 in the videotaped deposition of 6 Jefferson Foote in the matter of Hospira, Inc., vs. 7 Genentech Inc. 8 The case number is IPR2017-01488 and 01489. 9 Today's date is Sunday, February 4, 2018. 10 The time on the record is 8:59 a.m. 11 My name is Ryan LaFond. I am the 12 videographer. 13 The court reporter today is Tricia Rosate, 14 representing Planet Depos. 15 This video deposition is taking place at 16 2137 Pacific Highway in San Diego, California. 17 Would counsel please identify yourselves and 18 state whom you represent. 19 MR. LASKY: Benjamin Lasky from 20 Kirkland & Ellis, representing Pfizer, Hospira, and 21 the witness. 22 With me today is my colleague from 23 Kirkland & Ellis, Mark McLennan; and also Wendy Hsu, 24 H-s-u, from Pfizer. 25 MR. GUNTHER: And for the patent owner,</p>	<p style="text-align: center;">7</p> <p>1 Q Okay. And, sir, you're here today as an 2 expert on behalf of Pfizer and Hospira; correct? 3 A Correct. 4 Q Relating to IPRs that they filed. They 5 filed two of them, and the numbers have been read 6 into the record, and they relate to challenges to the 7 Carter-Presta '213 patent; correct? 8 A Correct. 9 Q Okay. Now, sir, I want to hand you -- I 10 want to get your declarations in front of you, and so 11 let's do that now, if we can. 12 So I'm -- I'm handing you what has been 13 previously marked as Pfizer Exhibit 1003. 14 (Exhibit 1003 was referenced.) 15 BY MR. GUNTHER: 16 Q And, sir, I'd like you to take a look at 17 that, if you can, and confirm for me that that's your 18 declaration that was submitted in the 01488 IPR 19 relating to the '213 patent. 20 A Okay. 21 Q And you can feel free to take the little 22 band off there, and if it gets a little out of order, 23 we'll try to keep it -- we'll try to do our best to 24 keep it in order. 25 A Okay. This looks like my declaration.</p>
<p style="text-align: center;">6</p> <p>1 Genentech, Bob Gunther and Andrew Le of the 2 Wilmer Hale firm. 3 THE VIDEOGRAPHER: Thank you very much. 4 Would the reporter please swear in the 5 witness. 6 JEFFERSON FOOTE, PhD, 7 having been first duly sworn, testified as follows: 8 EXAMINATION 9 BY MR. GUNTHER: 10 Q Good morning, Dr. Foote. 11 A Good morning, Mr. Gunther. 12 Q Good to see you again. 13 You and I did have -- met once before. I 14 took your deposition, and I think we decided it was 15 in 2016 in a -- in a previous case. Correct? 16 A That's correct. 17 Q And that was -- do you remember the name of 18 that case? 19 A That was Sanofi and Regeneron vs. Genentech 20 again. 21 Q Right. And City of Hope, I think, too. 22 A The City of Hope. Yes. 23 Q And that involved the Cabilly patents; is 24 that right? 25 A It did.</p>	<p style="text-align: center;">8</p> <p>1 Q I think, if you turn to page 194, if I've 2 got this right, that should be the signature page. 3 A Two numbering systems. 4 And there's my signature. Yes. 5 Q Okay. Great. 6 And -- and -- and, Dr. Foote, you see that 7 you signed that declaration, Exhibit 1003, on May 23, 8 2017; is that right? 9 A That's right. 10 Q And I take it you've reviewed that -- the 11 declaration and exhibits recently; correct? 12 A Yes. 13 Q You did that in connection with preparing 14 for your testimony today? 15 A I did. 16 Q Okay. And in doing -- 17 A Oh, declaration, not -- I didn't review all 18 the exhibits. 19 Q Okay. Did you look at some of the exhibits 20 in preparing for your deposition? 21 A Some, yes, but -- yes. 22 Q Not all? 23 A Not all. 24 Q Okay. Fair enough. 25 And, sir, in the course of -- at any point</p>

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9	<p>1 since you signed the declaration on May 23, 2017, and</p> <p>2 today, have you identified any errors or inaccuracy</p> <p>3 in -- in your declaration?</p> <p>4 A Just a couple. And this isn't an error. It</p> <p>5 was true at the time. That --</p> <p>6 Yeah. Paragraph 2 that says I'm currently</p> <p>7 the chief science officer of Arrowsmith</p> <p>8 Technologies --</p> <p>9 Q Okay.</p> <p>10 A -- in Seattle.</p> <p>11 I'm no longer the chief science officer.</p> <p>12 I'm a shareholder in this company, but I have no --</p> <p>13 no role in it.</p> <p>14 Q Okay. And that -- and when you say you're a</p> <p>15 shareholder in the company but you have no role, you</p> <p>16 mean no role as -- as -- as any type of employee; is</p> <p>17 that correct?</p> <p>18 A That's right.</p> <p>19 Q Okay. And when did you -- when did that --</p> <p>20 when did your relationship with Arrowsmith change?</p> <p>21 A Last summer.</p> <p>22 Q Okay. So that would have been sort of</p> <p>23 mid-2017?</p> <p>24 A That's right.</p> <p>25 Q Okay.</p>	11
10	<p>1 A Yeah.</p> <p>2 Q All right. And -- and, sir, what are you --</p> <p>3 what are you currently doing? What is your current</p> <p>4 work?</p> <p>5 A I wanted to make the other correction.</p> <p>6 Q Oh, I'm sorry. Right. Right. Right. Fair</p> <p>7 enough. Let's do those.</p> <p>8 A Let's see.</p> <p>9 In paragraph 48, it says, in the second</p> <p>10 sentence, "However, I note that in my review of the</p> <p>11 '213 patent, the '213 patent contains errors for both</p> <p>12 the light and heavy chain."</p> <p>13 Q Yes.</p> <p>14 A The way it's written there, it sounds like</p> <p>15 this is my discovery, but that's Dr. Padlan's</p> <p>16 discovery from an earlier version of this case.</p> <p>17 Q Okay. So -- and we're going to talk about</p> <p>18 that, but what you -- just to make sure I understand</p> <p>19 the -- the point you're making with respect to the</p> <p>20 second sentence of paragraph 48 of Exhibit 1003 --</p> <p>21 A Yeah.</p> <p>22 Q -- your point is that you -- you were not</p> <p>23 intending to imply that you had discovered --</p> <p>24 A That's right.</p> <p>25 Q -- the alleged errors that -- but that you</p>	12
11	<p>1 were reporting on something that Dr. Padlan had</p> <p>2 previously identified; is that correct?</p> <p>3 A That's just a small point.</p> <p>4 Q Okay.</p> <p>5 A But I looked at it, and I agreed with</p> <p>6 Dr. Padlan.</p> <p>7 Q Fair enough. Fair enough. And let me just</p> <p>8 make sure I understand that.</p> <p>9 You did look at what he -- the -- the --</p> <p>10 what he identified, and you agreed with him.</p> <p>11 A Yes.</p> <p>12 Q Okay.</p> <p>13 A Uh-huh.</p> <p>14 Q All right. And -- so let me just come back.</p> <p>15 We were talking about the change in relationship that</p> <p>16 you had with Arrowsmith --</p> <p>17 A Yes.</p> <p>18 Q -- in the summer of last year.</p> <p>19 And so my question to you is: What -- what</p> <p>20 have you been doing in terms of professional</p> <p>21 activities since then?</p> <p>22 A The main difference is that I'm doing</p> <p>23 research in the lab much more than previously.</p> <p>24 Q Okay. And -- and is there a lab that you're</p> <p>25 affiliated with currently?</p>	13

<p style="text-align: right;">13</p> <p>1 THE WITNESS: Well, you've -- you've touched 2 on a point about separation between academic and 3 corporate research, and I'm not sure there is a 4 distinction. Pasteur had this great line about there 5 being no difference between the fruit and the tree 6 that grows the fruit. 7 BY MR. GUNTHER: 8 Q Right. Right. Right. 9 A So I'm doing a project where I need to do 10 some very deep background work in an area that hasn't 11 been studied before, and that much is academic, but I 12 hope it leads to new drugs. 13 Q Practical -- 14 Yeah. Got it. Okay. That's -- that's very 15 helpful, and I appreciate that. And I appreciate the 16 Pasteur analogy as well. 17 So let me also, if I can, while we're -- 18 while we're just getting the declarations, let me put 19 the declaration that you prepared for the IPR, which 20 is -- goes by the number 01489, and that has been 21 previously marked as Exhibit -- oh, sorry -- 22 Exhibit 1503 in that proceeding. 23 And this is -- I'm sorry. This is -- this 24 is it. And -- 25 A This is it.</p>	<p style="text-align: right;">15</p> <p>1 many hours you spent preparing the declaration that 2 is Exhibit 1003? 3 A Oh. 4 Q Approximately. 5 A That would come from the billing records, 6 but I might guess 50. 7 Q 50 hours? 8 A Maybe. 9 Q Okay. 10 A Just -- that's a rough guess. 11 Q Yeah. Understood. Understood. 12 And then how about Exhibit 1503? And 13 recognizing that there's a fair amount of overlap, 14 can you -- can you give me any sense of about how 15 long you think you spent on that -- on that 16 declaration? 17 A I did them as though they were one. 18 Q I see. Okay. 19 So the 50 hours, would that apply to both, 20 basically? 21 A That's right. 22 Q Okay. Now, sir, you -- if you take a look 23 at -- let's go back to Exhibit 1003. And I'm going 24 to ask you to take -- take a look at paragraph 11, 25 and that's on page 4.</p>
<p style="text-align: right;">14</p> <p>1 (Exhibit 1503 was referenced.) 2 BY MR. GUNTHER: 3 Q And -- and, Dr. Foote, I'm going to ask you 4 a few questions about this, but I think probably most 5 of my questions are going to end up coming back to 6 the prior one, Exhibit 1003. 7 So, again, I think if -- if you could turn 8 to -- with -- in Exhibit 1503, can you first confirm 9 for me that this is your declaration filed in the 10 01489 IPR challenging the claims of the '213 patent? 11 A Here's my signature again. And, yes, it's 12 mine. 13 Q Okay. And -- and this -- just staying with 14 your signature page. It's again on page 194. That 15 was also signed on May 23, 2017; correct? 16 A That was. 17 Q Okay. And -- and, sir, same question that I 18 asked you with respect to the prior declaration. 19 With respect to Exhibit 1503, have you identified any 20 errors or inaccuracies that you'd like to correct at 21 this time? 22 A I think these two declarations are very 23 similar and it would be the same ones. 24 Q Okay. Great. Thank you. 25 Are you able at this juncture to tell me how</p>	<p style="text-align: right;">16</p> <p>1 A Uh-huh. 2 Q And you state in paragraph 11 that -- you 3 note that Mylan had previously filed an IPR 4 challenging certain claims of the '213 patent; 5 correct? 6 A Correct. 7 Q And you say that, as part of your analysis 8 you considered, you have considered Mylan's IPR 9 petitions and the declarations filed in support of 10 them; is that correct? 11 A Correct. 12 Q Okay. So here's -- here's what I want to 13 try to see if I can get at: When -- when did you 14 first learn of the '213 patent? When did that first 15 become something that you -- you -- you were aware 16 of? 17 A I -- I -- I can't remember reading about it 18 except in this case. 19 Q Okay. 20 A If I -- I might have come across it and have 21 forgotten about it. 22 Q So is -- is your best recollection -- 23 specific recollection of actually seeing the '213 24 patent -- is your first current recollection seeing 25 it in connection with this case?</p>

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