

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEST-WARD PHARMACEUTICALS INTERNATIONAL LIMITED
Petitioner,

v.

NOVARTIS AG
Patent Owner

Case IPR2017-01592¹
Patent US 8,410,131 B2

**WEST-WARD PHARMACEUTICALS INTERNATIONAL LIMITED'S
RESPONSE TO PATENT OWNER OBSERVATIONS ON CROSS-
EXAMINATION OF ALLAN J. PANTUCK, M.D.**

¹ IPR2018-00507 has been joined to this proceeding.

TABLE OF CONTENTS

Table of Authorities	ii
I. Response To Observation I: Wasik And Navarro	1
II. Response To Observation II: Zhang And Wasik 1994.....	2
III. Response To Observation III: Cottens WO '010.....	3
IV. Response To Observation IV: Determining The Scope Of “Tumor”	3
V. Response To Observation V: Lymphoproliferative Disorders.....	3
VI. Response To Observation VI: Temsirolimus Dosing And Everolimus	3
VII. Response To Observation VII: Tumor Proliferation Despite mTOR Inhibition.....	4
VIII. Response To Observations VIII, IX, X, XII, And XIII.....	4
IX. Response To Observation XI: Petitioner’s Chart Of “Rapamycin- Tumor-Related References”	4

TABLE OF AUTHORITIES

Page(s)

Cases

Actelion Pharm. v. Icos,
IPR2015-00561, Paper 33 (Mar. 18, 2016)..... 1

LG Elecs. v. ATI Techs.,
IPR2015-00325, Paper 52 (Jan. 25, 2016)..... 1

Medtronic v. Nuvasive,
IPR2013-00506, Paper 37 (Oct. 15, 2014)..... 1

Novartis, in its observations on cross-examination of Dr. Pantuck (Paper 60, “Obs.”), impermissibly argues its case rather than concisely pointing out relevant testimony and its relevance. That is, Novartis’s argumentative observations impermissibly characterize the subject testimony rather than quoting it or accurately summarizing it, address multiple passages in a single observation, characterize other exhibits, re-argue old arguments, and introduce new arguments. *Actelion Pharm. v. Icos*, IPR2015-00561, Paper 33 at 2-3 (Mar. 18, 2016) (examples of offending observations are in *Actelion Ex. 1049* at 14-15); *LG Elecs. v. ATI Techs.*, IPR2015-00325, Paper 52 at 3-4 (Jan. 25, 2016); *Medtronic v. Nuvasive*, IPR2013-00506, Paper 37 at 3-4 (Oct. 15, 2014) (dismissing motion that included argument).

Petitioners’ Response identifies Novartis’s improper observations. The responses use the same organization as Novartis’s observations.

I. Response To Observation I: Wasik And Navarro

Novartis cites and mischaracterizes incomplete testimony at Exhibit 2113 at 164:12-165:6 and 207:18-20. Novartis mischaracterizes Dr. Pantuck’s testimony relating to Wasik and Navarro. Novartis cites Exhibit 2113 at 164:12-165:6 and 207:18-20 to argue that Dr. Pantuck “admitted that solid excretory system tumors were ‘not specifically enumerated’ in Navarro.” Obs. at 1. Novartis states that this is relevant because “Dr. Pantuck testified that without preclinical data in a specific cancer, a POSA would not have had a reasonable expectation that a rapamycin

analog would inhibit the growth of that cancer.” *Id.* Novartis’s citation of Dr. Pantuck’s testimony, however, is incomplete and out of context. At 164:19-23, Dr. Pantuck explains: “I would say the same answer that I gave previously for the incorporation of the term ‘tumor’ from Cottens, similarly in Navarro, that a tumor without any further limitation as an example of a hyperproliferative disorder.” At 207:21-208:2, Dr. Pantuck explains, “Wasik lists tumors of the kidney as being one type that can be inhibited with -- with everolimus.”

II. Response To Observation II: Zhang And Wasik 1994

Novartis mischaracterizes and misquotes Exhibit 2113 at 118:4-18 and 124:8-126:33. Novartis argues that “Dr. Pantuck admitted that ‘a POSA would understand’ Wasik 1994 used ‘tumor’ ‘to refer to a liquid tumor’ and the Wasik 1994 ‘authors used the term “nonlymphoid tumor” to refer to solid tumors’; and that Zhang did ‘not disclose any type of solid tumor.’” Obs. at 2. However, Dr. Pantuck specifically testified that Wasik’s use of the term “tumor” as referring to a lymphoma in a paragraph in Wasik 1994 was limited to “this context in this paragraph,” not how Wasik 1994 understood the definition of “tumor” generally. Ex. 2113, 124:20-22. This testimony, therefore, is not relevant to how Cottens used the term “tumor” or how that term was incorporated by reference into Wasik. Dr. Pantuck also did not state that Zhang did “not disclose any type of solid tumor.” *See* Obs. At 2. This quote does not appear anywhere in Exhibit 2113.

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