

Case IPR2017-00904

Declaration of Diane J. Burgess, Ph.D. Under 37 C.F.R. § 1.68 in Support of
Petition for *Inter Partes* Review of U.S. Patent No. 6,774,122

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INNOPHARMA LICENSING, LLC,
Petitioner

v.

ASTRAZENECA AB,
Patent Owner

Case IPR2017-00904
Patent No. 6,774,122

DECLARATION OF DIANE J. BURGESS, Ph.D., UNDER 37 C.F.R. § 1.68
IN SUPPORT OF PETITION FOR *INTER PARTES* REVIEW OF U.S.
PATENT NO. 6,774,122

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I, Diane J. Burgess, Ph.D. hereby declare as follows:

I. INTRODUCTION

1. I have been retained as an expert witness on behalf of InnoPharma, LLC (“InnoPharma”) for the above-captioned Petition for *Inter Partes* Review (“IPR”) of U.S. Patent No. 6,774,122 (“the ’122 patent” or “the patent”).

2. I have been asked to provide my opinions on the validity of claims 1, 2, 5, and 9 of the ’122 patent (“the challenged claims”).

3. In preparing this Declaration, I have reviewed the ’122 patent, the file history of the ’122 patent, and the file histories of the following related patents: U.S. Patent Nos. 8,466,139 (“the ’139 patent”), 7,456,160 (“the ’160 patent”), and 8,329,680 (“the ’680 patent”). I have also reviewed the petition for *inter partes review* of the ’122 patent filed by Mylan Pharmaceuticals, Inc. (IPR2016-01316) (“Mylan IPR”), the supporting declarations and exhibits, the Patent Owner’s Response to that Petition, the supporting declarations and exhibits, and the Board’s decision denying institution of *inter partes review* on the related ’680 patent (IPR2016-01325, paper 11). In addition, I have reviewed numerous prior art references that would have been available to one skilled in the art before the time of the alleged invention.

4. I have been advised and it is my understanding that patent claims in an IPR are given their broadest reasonable construction in view of the patent

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