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US Patent and Trademark Office

**Actavis, LLC
v.
Abraxis Bioscience, LLC**

CONFIDENTIAL

***Video Deposition of:*
Cory Berkland, Ph.D.
November 30, 2017**

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTAVIS LLC,
Petitioner,

v.

ABRAXIS BIOSCIENCE, LLC,
Patent Owner.

Case IPR2017-01101
Case IPR2017-01103
Case IPR2017-01104

VIDEO DEPOSITION OF:
Cory J. Berkland, Ph.D.
November 30, 2017
Washington, DC
Lead: Andrew Chalson, Esquire
Firm: Quinn Emanuel Urquhart

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1 VIDEO SPECIALIST: Here begins video
2 number 1, volume 1, in the deposition of Dr. Cory
3 Berkland, Ph.D., taken in the matter of Actavis LLC
4 v. Abraxis Bioscience LLC. Today's date is
5 November 30th, 2017. The time on the video monitor
6 is 8:19.
7 This deposition is being taken at the office
8 of Winston & Strawn and was made at the request of
9 representatives of the Patent Owner. I am Jason
10 Aqui, the videographer, and the court reporter is
11 Linda Kinkade from Jane Rose Reporting, New York,
12 New York.
13 Counsel, please identify yourselves and
14 state whom you represent.
15 MR. CHALSON: Andrew Chalson from Quinn
16 Emanuel on behalf of the Patent Owner. With me is
17 Daniel Wiesner, also from Quinn Emanuel; Chris
18 Harnett from Jones Day; and Patrick Elsevier from
19 Celgene Corporation.
20 MR. KLEIN: Chuck Klein with Winston &
21 Strawn for Actavis and -- the Petitioner, and with
22 me is Sharon Lin.
23 MR. PATEL: Anil Patel with K&L Gates for
24 Cipla Limited.
25 VIDEO SPECIALIST: Will the court

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1 reporter please swear in the witness.
2 CORY J. BERKLAND, Ph.D.,
3 having been first duly sworn, was
4 thereafter examined and testified as follows:
5 EXAMINATION
6 BY MR. CHALSON:
7 **Q. Good morning, Dr. Berkland.**
8 A. Good morning.
9 **Q. My name is Andrew Chalson. I'm here on**
10 **behalf of the Patent Owner, and, as I'm sure you're**
11 **aware, we're here to talk about patent products**
12 **covering Abraxane. Do you understand that?**
13 A. Yes.
14 **Q. Can you state your full name and home**
15 **address for the record?**
16 A. Cory J. Berkland, 1117 East 1264 Road,
17 Lawrence, Kansas 66047.
18 **Q. You're currently employed by the**
19 **University of Kansas?**
20 A. That's correct.
21 **Q. Were you hired to participate in the**
22 **matters that we're here for today by Actavis?**
23 A. I was retained by counsel, but, yes, on
24 behalf of Actavis.
25 **Q. You were also retained by Cipla and**

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1 **Apotex in two other proceedings involving the same**
2 **patent; is that right?**
3 A. Yes, that's my understanding.
4 **Q. Are you represented by counsel today?**
5 A. Yes. I believe that's correct.
6 MR. KLEIN: Well, it's --
7 A. I don't know the legal --
8 MR. KLEIN: We'll to the form.
9 I'm not sure we technically represent him.
10 **Q. Do you know the answer to that,**
11 **Dr. Berkland?**
12 A. It sounds like a legal argument. I don't
13 know.
14 **Q. Okay. Do you know if you're represented**
15 **by anyone else in the room today?**
16 A. I don't know.
17 **Q. You understand you're under oath?**
18 A. Yes, I do.
19 **Q. Is there any reason you can't testify**
20 **truthfully and accurately?**
21 A. No, there is not.
22 **Q. You've been deposed before, correct,**
23 **Dr. Berkland?**
24 A. Yes.
25 **Q. About how many times?**

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1 A. I'd say around 15 probably.
2 **Q. It's fair to say you understand the**
3 **process?**
4 A. Yes.
5 **Q. Have you been deposed recently?**
6 A. Yes, I think in the last six months.
7 **Q. When was the most recent deposition you**
8 **did in a patent case?**
9 A. I think the most recent one, if I recall
10 correctly, was an IPR proceeding on behalf of
11 Alkermes.
12 **Q. Were you working with the Patent Owner or**
13 **the challenger in that case?**
14 A. I was working with the Patent Owner.
15 **Q. Was there a drug product at issue in that**
16 **case?**
17 A. Yes.
18 **Q. Do you recall which one?**
19 A. Risperdal Consta.
20 **Q. Do you know what dosage form that product**
21 **is?**
22 A. It's an injectable.
23 **Q. Does it involve nanotechnology?**
24 A. No.
25 **Q. I think you said you've been deposed**

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1 **about 50 times; is that right?**
 2 MR. KLEIN: Fifty?
 3 A. Fifteen.
 4 **Q. Fifteen. Of those 15, how many were**
 5 **patent cases?**
 6 A. I think all but one.
 7 **Q. Do you recall what the other one was**
 8 **about?**
 9 A. Yeah. Thanks for jogging my memory. So
 10 I have been deposed recently in a dispute between
 11 the University of Kansas and a former graduate
 12 student.
 13 **Q. Not a patent case.**
 14 A. Not a patent case.
 15 **Q. Other than the Risperdal case, have you**
 16 **been involved in any other IPRs?**
 17 A. Perhaps. I can't remember.
 18 **Q. Nothing comes to mind?**
 19 A. Nothing comes to mind. Sometimes I don't
 20 even know or understand if it's an IPR. I mean,
 21 I'm asked for a legal -- I'm asked for an opinion
 22 on a technical matter, and sometimes the
 23 proceedings get twisted up in my mind whether it's
 24 an IPR or a patent dispute.
 25 **Q. Were the other patent cases that you were**

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1 **involved in cases involving drug products?**
 2 A. Not always.
 3 **Q. About how many times have you been or**
 4 **have you provided written opinion in a case**
 5 **involving a patent dispute?**
 6 A. Like a declaration or an expert report?
 7 **Q. Any kind of written opinion.**
 8 A. The number of cases would probably be a
 9 little fewer than 15 because there were times I was
 10 retained and didn't provide a written opinion, and
 11 there were times I was retained and provided
 12 multiple written opinions in a single case matter.
 13 **Q. You're familiar with the Hatch-Waxman Act**
 14 **generally?**
 15 A. Generally speaking.
 16 **Q. Do you know what an Abbreviated New Drug**
 17 **Application is?**
 18 A. Yes.
 19 **Q. If I say an ANDA, you'll understand**
 20 **that's what I'm referring to?**
 21 A. I will.
 22 **Q. Have you ever testified at trial in an**
 23 **ANDA case?**
 24 A. I've testified at trial several times,
 25 and I think -- I think two or three of them were

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1 ANDA cases, but I -- I'm not positive.
 2 **Q. Do you expect to provide trial testimony**
 3 **in this case?**
 4 A. If called upon, I guess.
 5 **Q. You don't have an expectation one way or**
 6 **another sitting here today?**
 7 A. My experience has been a lot of these
 8 matters settle, so I don't know.
 9 **Q. You understand that we're here today in**
 10 **connection with proceedings before the Patent**
 11 **Office relating to the validity of patents relating**
 12 **to Abraxane?**
 13 A. Yes.
 14 **Q. You're also involved in pending**
 15 **litigation in federal court between the same**
 16 **parties regarding the same patents; is that right?**
 17 A. I think that's correct, but ...
 18 **Q. Do you know whether or not you signed a**
 19 **declaration and your name was disclosed in**
 20 **connection with the District Court litigation I**
 21 **just referred to?**
 22 A. I'll take your representation that that's
 23 true.
 24 **Q. You just don't have a specific**
 25 **recollection one way or the other today?**

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1 A. I can't remember if that was signed early
 2 on and then the IPR representation was later. I
 3 can't recall.
 4 **Q. What did you do to prepare for today's**
 5 **deposition?**
 6 MR. KLEIN: We caution the witness not to
 7 reveal the contents of any communications with
 8 counsel.
 9 A. Sure. I arrived Tuesday, early in the
 10 morning, and spent the better half of Tuesday and
 11 yesterday preparing with counsel.
 12 **Q. When you say "preparing with counsel,"**
 13 **are you referring to Mr. Klein and Ms. Lin?**
 14 A. Yes.
 15 **Q. Was anyone else present?**
 16 A. I was joined by our third member here on
 17 the second day. We also had shared a video
 18 connection with counsel representing Apotex. I
 19 think that's correct.
 20 **Q. Do you recall specifically who the**
 21 **attorneys were for Apotex?**
 22 A. No, I can't recall their names.
 23 **Q. Were there more than one person?**
 24 A. Yes, two.
 25 **Q. Man or woman?**

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1 A. A man and a woman. I'm sorry. I can't
2 recall their names.
3 **Q. Did you talk to anyone else in**
4 **preparation for your deposition?**
5 A. No.
6 **Q. Do you know if there's any kind of joint**
7 **defense agreement or any other formal cooperation**
8 **between Actavis and Apotex or Cipla?**
9 MR. KLEIN: Objection, foundation.
10 A. I don't even know what that means from a
11 legal perspective.
12 **Q. Fair enough. Who has engaged you in**
13 **connection with any analysis you've done of the**
14 **patents at issue in these proceedings?**
15 A. I was first engaged by Winston Strawn,
16 and then over the week and a half leading up to
17 this deposition was engaged by counsels
18 representing Apotex and Cipla or no -- I get the
19 legal terms mixed up with the company, the
20 pharmaceutical companies sometimes. Hopefully
21 that's correct.
22 **Q. Sure. So not going to hold you to any**
23 **specifics --**
24 A. Okay.
25 **Q. -- as to who retained you, but in terms**

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1 **of the companies, correct me if this is wrong, but**
2 **you were first retained by Actavis, right?**
3 A. Correct.
4 **Q. Through counsel?**
5 A. Yes.
6 **Q. And then you were subsequently retained**
7 **by both Cipla and Apotex?**
8 A. That's correct.
9 **Q. So sitting here today, you are currently**
10 **retained by all three of those companies in**
11 **connection with analyzing the patents that we're**
12 **here to talk about today.**
13 A. That's my understanding.
14 **Q. I think you said you were retained within**
15 **the week or week and a half leading up to this**
16 **deposition by Apotex and Cipla; is that right?**
17 A. Yeah. I can't recall when the latest
18 declarations were filed on behalf of Apotex and
19 Cipla, but it was roughly a week or so before those
20 were filed.
21 **Q. Understood. Did you review any documents**
22 **during preparation for your deposition?**
23 A. Yes.
24 **Q. Do you recall reviewing any specific**
25 **documents?**

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1 MR. KLEIN: You can -- I'll object on
2 work product grounds, but you can answer the
3 question generally.
4 A. Yeah, I reviewed my declarations as well
5 as responses. I reviewed the exhibits associated
6 with those documents. I think that's about it.
7 **Q. Did you review anything that was**
8 **exchanged by the parties or the Patent Office in**
9 **this proceeding after you put your declaration in**
10 **back in April?**
11 A. Are you -- are you asking if I reviewed
12 any new material that wasn't part of the
13 declaration as filed?
14 **Q. Yes.**
15 A. I can't recall.
16 **Q. So, for example, you understand that**
17 **after you put your declaration in the Patent Owner**
18 **put in a preliminary response in each of the four**
19 **proceedings? Are you aware of that?**
20 A. Yes.
21 **Q. Did you review that preliminary response?**
22 A. I think they were provided to me, if I
23 remember correctly, but I don't remember reading
24 them in detail.
25 **Q. And subsequent to that, the Patent Office**

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1 **issued rulings in all four of the cases in which**
2 **you put in declarations. Are you aware of that?**
3 A. Yes.
4 **Q. Have you reviewed those four rulings from**
5 **the Patent Office?**
6 A. Again, I think they might have been
7 provided to me. Actually I recall them being
8 provided to me except for maybe the 260. I don't
9 know if I saw that one or not since it wasn't
10 instituted, but -- I had the documents. I don't
11 know that I read them -- certainly didn't read them
12 in detail.
13 **Q. And that's true even including your**
14 **deposition prep over the last two days; you didn't**
15 **review the preliminary responses or the Patent**
16 **Office decisions in detail?**
17 A. That's true.
18 **Q. Let's just take a step back and talk**
19 **generally about your education.**
20 **You have a Bachelor of Science in chemical**
21 **engineering from Iowa State in 1998; is that right?**
22 A. That's correct.
23 **Q. Did any of your coursework leading up to**
24 **that degree focus on nanotechnology?**
25 A. I certainly was exposed to colloids in

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