

Mylan Exhibit 1028

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

MERCK SHARP & DOHME CORP.,
Patent Owner.

Case IPR2020-00040
U.S. Patent 7,326,708

DECLARATION OF LIAD WHATSTEIN

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I, Liad Whatstein, hereby declare as follows:

1. I am lead counsel for Merck Sharp & Dohme Corp. (“Merck”) in patent opposition proceedings initiated by Teva Pharmaceutical Industries Ltd. (“Teva”) before the Israel Registrar of Patents and Trademarks. These proceedings pertain to Patent Registration Application 172563, an Israeli counterpart of U.S. Patent No. 7,326,708 (“the ’708 patent”). I am familiar with all pleadings, exhibits, and other documents filed in those proceedings.

2. I understand that Mylan Pharmaceuticals Inc. (“Mylan”) has petitioned for *inter partes* review of the ’708 patent in this proceeding and has objected to the following exhibits submitted by Merck in support of its Patent Owner’s Response under Federal Rule of Evidence 901 as allegedly lacking evidence of authenticity: EX2192, EX2221, EX2222, EX2223, EX2224, EX2225, EX2226, and EX2227.

3. I have reviewed the foregoing exhibits, and as specifically discussed in the following paragraphs, they are true and correct copies of documents submitted by the parties and their experts—Dr. Leonard J. Chyall for Teva and Dr. Jerry L. Atwood for Merck—in the foregoing Israeli patent opposition proceedings in which I serve as lead counsel for Merck.

DECLARATION OF LIAD WHATSTEIN

4. EX2192 is a true and correct copy of Dr. Chyall's second declaration, including exhibits thereto, submitted by Teva in the Israeli patent opposition proceedings, dated March 7, 2012.

5. EX2221 is a true and correct copy of Dr. Atwood's first affidavit submitted by Merck in the Israeli patent opposition proceedings, dated June 6, 2011. The exhibits included in EX2221 were submitted with Dr. Atwood's first affidavit in Israel. Accompanying this declaration is EX2266, which is a true and correct copy of Dr. Atwood's first affidavit that includes all of the exhibits in the Israeli submission (including additional exhibits not included in EX2221).

6. EX2222 is a true and correct copy of Dr. Atwood's second affidavit, including exhibits thereto, submitted by Merck in the Israeli patent opposition proceedings, dated August 20 2012.

7. EX2223 is a true and correct copy of Dr. Atwood's third affidavit, including exhibits thereto, submitted by Merck in the Israeli patent opposition proceedings, dated September 13, 2013.

8. EX2224 is a true and correct copy of Dr. Chyall's third declaration submitted by Teva in the Israeli patent opposition proceedings, dated February 19, 2013. The exhibits in EX2224 were submitted with Dr. Chyall's third declaration in Israel. Accompanying this declaration is EX2267, which is a true and correct

proceedings, dated August 3, 2010.

10. EX2226 is a true and correct copy of Dr. Chyall's Laboratory Notebook No. 4031 submitted by Teva in the Israeli patent opposition proceedings.

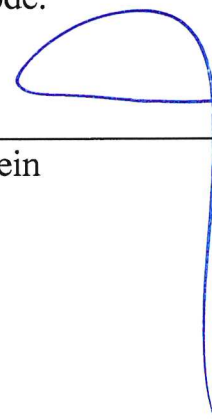
11. EX2227 is a true and correct copy of the transcript of the hearing conducted on January 29, 2015, in the Israeli patent opposition proceedings containing the cross-examination testimony of Dr. Chyall.

* * *

I hereby declare that all statements made herein of my own knowledge true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated: September 11, 2020

Liad Whatstein



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