UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PAR PHARMACEUTICAL, INC., and ROXANE LABORATORIES, INC.
Petitioners

v.

JAZZ PHARMACEUTICALS, INC.
Patent Owner

Case CBM: Unassigned

PETITION FOR COVERED BUSINESS METHOD PATENT REVIEW OF U.S. PATENT NO. 7,668,730 UNDER 35 U.S.C. § 321 AND § 18 OF THE LEAHY-SMITH AMERICA INVENTS ACT

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I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED (37 C.F.R. § 42.22(a))

Par Pharmaceutical, Inc. and Roxane Laboratories, Inc. (collectively, "Petitioners") petition for covered business method patent ("CBM") review and seek cancellation of claims 1-11 of U.S. Patent No. 7,668,730 ("the '730 patent") (PAR1001). According to USPTO records, the '730 patent is assigned to Jazz Pharmaceuticals, Inc. Jazz is currently asserting the '730 patent against Petitioners. (*See* PAR1025 and PAR1026.)

II. OVERVIEW

Claims 1-11 of the '730 patent are unpatentable because they: (i) claim ineligible subject matter under 35 U.S.C. § 101; (ii) are anticipated by the prior art under 35 U.S.C. § 102(b); and (iii) are obvious over the prior art under 35 U.S.C. § 103, even in view of secondary considerations of nonobviousness.

The challenged claims simply recite methods for centralized distribution of retail goods, specifically drugs, through a central pharmacy, rendering them incidental to a financial product or service. And these claims are directed to methods and not any technological invention. The claims' recitation of a generic computer processor does not change this conclusion. Moreover, the claimed distribution methods are not novel or nonobvious and do not solve a technological problem with any technological solution. CBM review is, therefore, appropriate.

By law, no patent should issue if it claims: "A prior art method X," which is simply an abstract idea, and nothing more. Yet the '730 patent claims just that. Even in their best possible light, the claims are merely drawn to abstract ideas, and nothing more, artfully drafted in an effort designed to monopolize the abstract idea itself, as warned against in *Alice Corp. v. CLS Bank Int'l*, No. 13-298, 573 U.S. __ (2014) and *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1297 (2012). For example, challenged claims 1-11 are directed to the abstract idea of centralizing distribution of hazardous or abuse-prone drugs to reduce the abuse risks associated with the drugs without any meaningful limitations. And, the claimed steps can be performed by a human intermediary without any computer operation. (PAR1007, ¶50.)

The challenged claims are also unpatentable as being anticipated by and obvious in view of the relevant prior art. For example, published materials that were used in an FDA Advisory Committee Meeting (the "Advisory Committee Art" or "ACA") disclose every limitation of the challenged claims more than a year before the '730 patent's earliest effective filing date. Accordingly, the challenged claims are anticipated. Alternatively, the challenged claims would also have been obvious to a person of ordinary skill in the art ("POSA") at the time of the invention over the same art, even in view of any available alleged objective indicia of nonobviousness.

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