

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIODELIVERY SCIENCES INTERNATIONAL, INC.
Petitioner

v.

RB PHARMACEUTICALS LIMITED
Patent Owner.

Case IPR2014-00325
Patent 8,475,832

PATENT OWNER'S CORRECTED RESPONSE

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BUPRENORPHINE PHARMACOKINETICS BACKGROUND.....	10
III. CLAIM CONSTRUCTION.....	17
A. Legal Standard For Claim Construction In Inter Partes Review	18
B. Claim 15’s “Wherein” Clause Is Entitled To Patentable Weight.....	18
C. The ‘832 Patent Solely Concerns Oral Transmucosal Absorption.....	20
IV. CLAIMS 15-19 OF THE ’832 PATENT ARE NOT ANTICIPATED BY LABTEC 26	
A. Labtec Proposes Only Oral Films Designed To Provide GI Absorption To Mimic The Pharmacokinetics Of Peroral GI-Absorbed Dosages	27
B. Labtec Does Not Anticipate Because It Does Not Disclose Oral-Transmucosal Films As Required By The Properly Construed Claims.....	29
C. Labtec Does Not Anticipate Because It Only Discloses A Wish Or A Goal And Not The Claimed Film	30
D. Labtec Does Not Anticipate Because It Fails To Enable The Claimed Invention	32
1. Labtec Only Proposes A Film Version Of Suboxone® Tablets By Mistake 32	
2. Even If The Claims Are Not Limited To Oral-Transmucosal Films, Labtec Is Inoperable On Its Own Terms If Applied To Suboxone® 33	
3. Even If The Claims Are Not Limited To Oral Transmucosal Films, GI-Absorbed Dosages Do Not Accomplish Therapeutically Acceptable Effects 35	
4. It Is Not Technically Possible To Meet Claim 19 Through Peroral Administration Of Naloxone Under Any Reading Of The Claim 36	
V. CLAIMS 15-19 ARE NOT RENDERED OBVIOUS BY LABTEC, YANG, OR BIRCH 38	
A. Labtec Cannot Render Obvious Claims Requiring Oral-Transmucosal Films As Required By The Properly Construed Claims.....	39
B. A Person Of Skill In The Art Would Not Look To Labtec In Seeking To Develop A Film For Delivery Of Buprenorphine	39

TABLE OF CONTENTS

	Page
C. Petitioner Failed To Provide Any Evidence That A Person Skilled In The Art Would Have Had A Reasonable Expectation Of Successfully Combining Labtec, Birch, And Yang To Arrive At The Claimed Invention.....	41
1. Yang Teaches Pharmaceutical Film Manufacturing Methods To Achieve Uniformity Of Active Content	41
2. Birch Has Nothing To Do With Pharmaceutical Films	43
3. Labtec Cannot Be Transmogrified Into Its Opposite	44
D. Even If Labtec, Yang And Birch Were Combined, It Would Require Undue Experimentation To Arrive At The Claimed Invention.....	47
E. Secondary Considerations Support A Finding Of Nonobviousness	53
VI. Conclusion	57

I. INTRODUCTION

Patent Owner RB Pharmaceuticals Limited respectfully submits this Response to BDSI's Petition (Paper 8) seeking *inter partes* review ("IPR") of Claims 15-19 ("the challenged claims") of U.S. Patent No. 8,475,832 ("the '832 patent") (Ex. 1001).¹

The only issue presently before the Board is whether Petitioner has carried its burden of proving that the challenged claims are invalid as i) anticipated by Labtec or ii) obvious over the combination of Labtec, Yang and Birch.² Paper 17, 21. As shown below, the complete record demonstrates that these claims are valid, and that Petitioner has failed to carry its burden of proving otherwise.

Patent Owner's Preliminary Response did not have the benefit of expert testimony. Now, in support of this Response, Patent Owner submits the accompanying declaration of Dr. Thomas Johnston, an expert in the pharmaceutical sciences, that makes clear that the challenged claims are neither anticipated nor rendered obvious by the Grounds in issue. In particular, Dr. Johnston provides critical information about the pharmacokinetics of the relevant active ingredients, buprenorphine and naloxone, information that fully rebuts

¹ This Response is timely because it is filed on revised Due Date 1 set forth in the Joint Notice of Stipulated Revised Due Dates (Paper 22).

² Terms defined in the Board's Institution Decision are used herein as so defined.

Petitioner's invalidity theories of anticipation and obviousness.

A. Lack Of Anticipation Overview

Dr. Johnston explains why the knowledge a skilled person would have of the pharmacokinetic profile of buprenorphine in combination with a proper understanding of both Labtec and the '832 patent refute Petitioner's anticipation arguments. In particular, Dr. Johnston explains that it *has long been known that, due to extensive first-pass metabolism effects, buprenorphine has very poor bioavailability if administered perorally*, i.e., swallowed such that it is absorbed in the gut, as opposed to in the mouth. Thus, *it has also long been known that it is not therapeutically effective or acceptable to administer buprenorphine perorally* due to buprenorphine's poor bioavailability and the expectation that peroral administration would likely increase inter- and intra-patient variability, make effective dosing less predictable and increase the risk of incurring side effects from buprenorphine, which is a potent opioid. Additionally, given the poor bioavailability resulting from peroral administration, peroral dosing would require significantly higher dosing as compared, for example, to sublingual administration, thus providing more of the agonist to be potentially abused or diverted, as well as increasing the amounts needed, and thus increasing manufacturing costs. Peroral administration, therefore, would be regarded by those skilled in the art as disfavored and therapeutically inappropriate, particularly given that it has long

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.