

Date Filed: January 29, 2016

On Behalf Of:

Novartis AG and LTS Lohmann Therapie-Systeme AG,
Patent Owners

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NOVEN PHARMACEUTICALS, INC.,
and MYLAN PHARMACEUTICALS INC.
Petitioner,

v.

NOVARTIS AG and LTS LOHMANN THERAPIE-SYSTEME AG,
Patent Owner.

Case No. IPR2014-00550¹
U.S. Patent 6,335,031 B1

**NOVARTIS AG and LTS LOHMANN THERAPIE SYSTEME AG's
NOTICE OF APPEAL UNDER 37 C.F.R. § 90.2(a)**

¹ Case IPR2015-00268 has been joined with this proceeding.

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a) and 35 U.S.C. § 142, that Patent Owners Novartis AG and LTS Lohmann Therapie Systeme AG appeal to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board (“Board”) in Case IPR2014-00550 entered on September 28, 2015 (Paper 69) (“Final Written Decision”) and from the Decision Denying Patent Owner’s Request for Rehearing entered on November 30, 2015 (Paper 77) (“Rehearing Request Denial”), and from all underlying orders, decisions, rulings and opinions, including without limitation the Decision Instituting Inter Partes Review entered on October 14, 2014 (Paper 10) (“Institution Decision”).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owners indicate that the issues on appeal include, but are not limited to: the Board’s failure to observe procedure required by law, including, but not limited to, 5 U.S.C. §§ 554 and 556, 35 U.S.C. §§ 2, 311, 314 and 316, and 37 C.F.R. §§ 42.1, 42.20, and 42.104; the Board’s failure to abide by its burden under *In re Baxter International, Inc.*, 678 F.3d 1357, 1365 (Fed. Cir. 2012) to “ideally . . . not arrive at a different conclusion” from the Federal Circuit’s decision in *Novartis Pharmaceuticals Corp. v. Watson Laboratories, Inc.*, 611 F. App’x 988 (Fed. Cir. 2015) affirming the nonobviousness of the U.S. Patent No. 6,335,031 (“’031 patent”); the Board’s impermissible shifting of the burden to Patent Owners to show patentability in

violation of 35 U.S.C. § 316(e), 5 U.S.C. § 556(d), and 37 C.F.R. § 42.20(c); the Board's failure to consider only prior art consisting of patents or printed publications in contravention of 35 U.S.C. § 311; the Board's determination that the challenged claims of the '031 patent are unpatentable under 35 U.S.C. § 103, which is factually incorrect, not supported by law or substantial evidence, is not based on consideration of the complete record, was not the result of a logical and rational process, and is incorrect as a matter of law; and any finding or determination supporting or related to these issues, as well as all other issues decided adversely to Patent Owners in any orders, decisions, rulings and opinions, all of which, taken together or independently, caused prejudicial harm to Patent Owners.

Simultaneous with this submission to the Director of the United States Patent and Trademark Office, a copy of this Notice of Appeal is being filed electronically with the Patent Trial and Appeal Board. In addition, a copy of this Notice of Appeal is being filed electronically with the Clerk's Office for the United States Court of Appeals for the Federal Circuit, along with the required docketing fee.

Respectfully submitted,

Patent Owners: Novartis AG and
Lohmann Therapie-Systeme AG

CERTIFICATE OF FILING

I certify that the foregoing NOVARTIS AG and LTS LOHMANN THERAPIE SYSTEME AG's NOTICE OF APPEAL UNDER 37 C.F.R. § 90.2(a) was filed electronically through the Board's PRPS System, and the original version was served by priority mail express (Mail Label: EK 476561885 US) on this 29th day of January, 2016, with the Director of the United States Patent and Trademark Office, at the following address:

United States Patent and Trademark Office
c/o Office of the General Counsel
P.O. Box 1450
Alexandria, Virginia 22313-1450

CERTIFICATE OF FILING

I certify that a true and correct copy of the foregoing NOVARTIS AG and LTS LOHMANN THERAPIE SYSTEME AG's NOTICE OF APPEAL UNDER 37 C.F.R. § 90.2(a) was filed electronically through the CM/ECF System on this 29th day of January, 2016, with the Clerk's Office of the United States Court of Appeals for the Federal Circuit, at the following address:

United States Court of Appeals for the Federal Circuit
717 Madison Place NW, Suite 401
Washington, DC 20005

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