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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. IPR2014-00550[1]
U.S. Patent 6,335,031 B1

NOVARTIS AG and LTS LOHMANN THERAPIE SYSTEME AG's REQUEST FOR REHEARING UNDER 37 C.F.R. § 42.71(d)

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

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Rules

37 C.F.R. § 42.71(d) 1

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I. INTRODUCTION

Patent Owner respectfully requests rehearing under 37 C.F.R. § 42.71(d) of the Patent Trial and Appeal Board's September 28, 2015 Final Written Decision (Paper 69) ("Final Decision") as to claims 1-3, 7, 15-16 and 18 of U.S. Patent No. 6,335,031 B1 ("the '031 patent"). The Board found those claims unpatentable as obvious over Enz, The Handbook, Rosin, Ebert and/or Elmalem or alternatively, over Enz and Sasaki.[2] Patent Owner respectfully requests that the Board revisit Patent Owner's arguments that were misapprehended or overlooked, and conclude that the '031 patent claims at issue would not have been obvious. In particular, the Board overlooked 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) ("*Watson*") affirming the nonobviousness of the '031 patent.

II. STATEMENT OF PRECISE RELIEF REQUESTED

Patent Owner respectfully requests that the Board reconsider its Final Decision and hold that Petitioner has failed to establish by a preponderance of the

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[2] Patent Owner's Request for Rehearing uses the same abbreviations and shorthand references used in the Final Decision (Paper 69).

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evidence that claims 1-3, 7, 15-16 and 18 of the ’031 patent are unpatentable.

III. THE RELIEF REQUESTED SHOULD BE GRANTED

A. Petitioner Failed To Meet Its Burden Of Proof That Claims 1-3, 7, 15-16 And 18 Of The ’031 Patent Are Unpatentable Over Enz, The Handbook, Rosin, Ebert and/or Elmalem

The Board held the ’031 patent claims at issue obvious over Enz, the Handbook, Rosin, Ebert and/or Elmalem. Specifically, the Board found that either Elmalem or knowledge in the art taught that rivastigmine was “susceptible” to oxidative degradation and that this alleged “susceptibility” would have motivated a person of ordinary skill in the art to combine rivastigmine with an antioxidant in a transdermal device. (Paper 69 at 28-38.)

While the Board is correct that Petitioner presented additional prior art that was not before the federal courts in *Watson* (*id.* at 4), the Board incorrectly overlooked the Federal Circuit’s *Watson* decision affirming the nonobviousness of the ’031 patent with respect to the prior art and arguments that were before the *Watson* Court. *See Baxter*, 678 F.3d at 1365 (“[E]ven with the more lenient standard of proof” that applies in reexamination, “the PTO ideally should not arrive at a different conclusion” than a district court finding of nonobviousness

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