

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AGILA SPECIALTIES INC. AND
MYLAN PHARMACEUTICALS INC.,
Petitioners,

v.

CUBIST PHARMACEUTICALS, INC.
Patent Owner

Patent No. 8,058,238

Case IPR2015 UNASSIGNED

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 8,058,238**

TABLE OF CONTENTS

I.	INTRODUCTION	1
	A. Overview of the ‘238 Patent.....	1
	B. Brief Overview of the Prosecution History.....	2
II.	GROUND FOR STANDING - § 42.104(a).....	3
III.	MANDATORY NOTICES UNDER 37 C.F.R. § 42.8.....	3
	A. Real Party in Interest.....	3
	B. Related Matters Under 37 C.F.R. § 42.8(b)(2)	4
	C. Lead and Backup Counsel and Service Information.....	4
IV.	STATEMENT OF THE PRECISE RELIEF REQUESTED FOR EACH CLAIM CHALLENGED.....	5
	A. Identification of the Challenge - § 42.104(b).....	5
V.	LEVEL OF ORDINARY SKILL IN THE ART	6
VI.	CLAIM CONSTRUCTION	6
VII.	SCOPE AND CONTENT OF THE PRIOR ART.....	8
	A. U.S. Patent No. 4,874,843 (“‘843 Patent”) [Ex. 1007].....	8
	B. U.S. Patent No. 5,912,226 (“the ‘226 Patent”) [Ex. 1010].....	9
	C. Mulligan and Gibbs, <i>Recovery of Biosurfactants by Ultrafiltration</i> , JOURNAL OF CHEMICAL TECHNOLOGY & BIOTECHNOLOGY , 47:23-9 (1990). (“Mulligan”) [Ex. 1013]	10

D. Lin and Jiang, *Recovery and Purification of the Lipopeptide Biosurfactant Bacillus subtilis by Ultrafiltration*, **BIOTECHNOLOGY TECHNIQUES**, 11:413-16 (1997). (“Lin I”) [Ex. 1014]..... 11

E. Lin et al., *General Approach for the Development of High-Performance Liquid Chromatography Methods for Biosurfactant Analysis and Purification*, **JOURNAL OF CHROMATOGRAPHY**, 825:145-49 (1998). (“Lin II”) [Ex. 1015] 12

F. U.S. Patent No. 4,331,594 (“the ‘594 Patent”) [Ex. 1009] 13

G. Baltz, *Lipopeptide Antibiotics Produced by Streptomyces roseosporus and Streptomyces fradiae*, in **BIOTECHNOLOGY OF ANTIBIOTICS** (W.R. Strohl ed. 1997). (“Baltz”) [Ex. 1008]..... 14

VIII. EXPLANATION OF GROUNDS FOR UNPATENTABILITY 15

 A. Biosurfactant Background..... 15

 B. State of the Art in January 2000..... 17

IX. EACH GROUND OF UNPATENTABILITY DEMONSTRATES A REASONABLE LIKELIHOOD OF PREVAILING AGAINST THE CHALLENGED CLAIMS OF THE ‘238 PATENT 20

 A. Ground 1: Claims 66-84, 94-104, 112, and 163 of the ‘238 Patent are Anticipated and/or Obvious Over the ‘226 Patent..... 20

B. Ground 2: Claims 37-42 of the ‘238 Patent are Obvious Over the ‘843 Patent in View of Mulligan, Lin II, the ‘226 Patent, Lin I and the ‘594 Patent 29

C. Ground 3: Claims 48, 94-99, 100-104, 112, and 139-143, and 163 of the ‘238 Patent are Invalid as Obvious Over the ‘843 Patent in View of Mulligan, Lin II and the ‘226 Patent and the ‘594 Patent..... 38

 (i) Claims 48, 112 and 163 38

 (ii) Claims 94-99, 100-104, 139-143 42

D. Ground 4: Claims 66-84 of the ‘238 Patent are Invalid as Obvious Over the ‘843 Patent In View of Mulligan, Lin II and the ‘226 Patent and Further In View of Baltz and the ‘594 Patent..... 50

X. THE OFFICE’S REASONS FOR ALLOWANCE OF THE PATENT WAS INCORRECT AND NOT SUPPORTED BY THE PRIOR ART’S TEACHINGS 57

 A. The ‘226 Patent is Prior Art Under 35 U.S.C. § 102(a)..... 58

 B. The Office Should Have Brought a Rejection Under 35 U.S.C. § 103(a) Over the ‘226 Patent 58

XI. CONCLUSION..... 59

XII. PAYMENT OF FEES UNDER 37 C.F.R. §§ 42.15(a) AND 42.103..... 61

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.