

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRAXAIR DISTRIBUTION, INC.,
Petitioner,

v.

INO THERAPEUTICS LLC,
Patent Owner.

Case IPR2015-00529
Patent 8,846,112 B2

Held: March 29, 2016

BEFORE: LORA M. GREEN, TINA E. HULSE, and ROBERT
A. POLLOCK, Administrative Patent Judges.

The above-entitled matter came on for hearing on Tuesday,
March 29, 2016, commencing at 1:00 p.m., at the U.S. Patent and
Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case IPR2015-00529
Patent 8,846,112 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

SANJAY MURTHY, ESQ.
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ON BEHALF OF PATENT OWNER:

BOB STEINBERG, ESQ.
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Latham & Watkins
355 South Grand Avenue
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1 today. To his right is Chi Cheung, who is going to have the hot
2 seat.

3 JUDGE POLLOCK: Gentlemen.

4 A few matters of housekeeping before we begin. First I
5 would like to remind the parties that this hearing is open to the
6 public and a full transcript of the hearing will be made part of the
7 record. Second, we are aware of Petitioner's objections into
8 evidence of paper 31, we will address them in the final written
9 decision. And we also note that both parties have raised
10 objections to certain demonstrative exhibits setting forth
11 arguments not raised in the briefs. While you certainly will be
12 able to refer to your demonstratives during the hearing, the
13 demonstratives will not be part of the record of the hearing, nor
14 will we rely on new arguments in the final written decision.
15 Accordingly, we take your objections under advisement.

16 Finally, when discussing any particular demonstrative
17 today, please refer to it by slide number or page number,
18 particularly today, where one of our judges is presiding by
19 teleconference.

20 Petitioner, you have the burden of showing
21 unpatentability of the challenged claims, if you would like to
22 begin.

23 MR. MURTHY: Good afternoon, Judges Green,
24 Pollock and Hulse. My name is Sanjay Murthy and I will be
25 presenting on behalf of Petitioner today.

1 Nitric oxide was first approved by the FDA in 2000,
2 nearly 16 years ago. Accepting the Patent Owner's arguments
3 here in this case would mean that any person, including the Patent
4 Owner, could continue patenting their invention indefinitely
5 merely by providing a set of instructions with that product. That's
6 the entire reason the printed subject matter doctrine exists, is to
7 prevent this sort of perpetual claiming throughout entirety.

8 All of the arguments that the Patent Owner has made in
9 its written submissions here have been rejected multiple times by
10 the Federal Circuit in decisions such as *AstraZeneca, In Re: Kao*,
11 and *King*. So, I think the issues that we're here to talk about
12 today are fairly straightforward, and just very quickly, I want to
13 present the Board very briefly with just an overview of what
14 we're going to be talking about today.

15 Obviously the Board in its initial decision provided
16 some guidance on claim construction, and the issue of printed
17 matter. We believe that the Board's analysis of the claims was
18 correct. In addition, we believe that there is no evidence here of
19 any functional relationship tying the limitations in the claims to
20 the printed matter.

21 In addition, with respect to the limitation
22 "pharmaceutically acceptable nitric oxide gas," we don't believe
23 that that is a limitation of the claim. It only appears in the
24 preamble. In fact, if you remove that limitation from the claim,
25 everything else in the claim would remain the same.

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