

trials@uspto.gov

IPR2015-00884, Paper No. 53
IPR2015-00888, Paper No. 53
IPR2015-00889, Paper No. 53
IPR2015-00891, Paper No. 53
IPR2015-00893, Paper No. 52
August 17, 2016

571-272-7822

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRAXAIR DISTRIBUTION, INC.,
Petitioner,

v.

INO THERAPEUTICS, LLC,
Patent Owner.

IPR2015-00884 (Patent 8,291,904 B2)
IPR2015-00888 (Patent 8,776,794 B2)
IPR2015-00889 (Patent 8,573,209 B2)
IPR2015-00891 (Patent 8,573,210 B2)
IPR2015-00893 (Patent 8,776,795 B2)

Held: May 16, 2016

BEFORE: KEN B. BARRETT, MICHAEL J. FITZPATRICK,
and SCOTT A. DANIELS, Administrative Patent Judges.

The above-entitled matter came on for hearing on Monday, May 16, 2016, commencing at 10:00 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

IPR2015-00884 (Patent 8,291,904 B2)
IPR2015-00888 (Patent 8,776,794 B2)
IPR2015-00889 (Patent 8,573,209 B2)
IPR2015-00891 (Patent 8,573,210 B2)
IPR2015-00893 (Patent 8,776,795 B2)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

SANJAY K. MURTHY, ESQUIRE
Morgan Lewis
77 West Wacker Drive
Chicago, Illinois 60601-5094

and

BENJAMIN E. WEED, ESQUIRE
K&L Gates, LLP
70 West Madison Street, Suite 3100
Chicago, Illinois 60602-4207

ON BEHALF OF PATENT OWNER:

DAVID K. CALLAHAN, ESQUIRE
BOB STEINBERG, ESQUIRE
Latham & Watkins, LLP
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611

1 P R O C E E D I N G S

2 - - - - -

3 JUDGE FITZPATRICK: Good morning. Judge
4 Daniels, are you hearing us?

5 JUDGE DANIELS: Good morning. I can hear you just
6 fine. I'll keep my microphone off so there's no feedback for the
7 time being.

8 JUDGE FITZPATRICK: Excellent. I am Judge
9 Fitzpatrick. This is Judge Barrett to my right, and Judge Daniels
10 is joining us remotely. This is the hearing for five related IPRs,
11 IPR2015-00884, 00888, 00889, 00891 and 00893. And why don't
12 we have the counsel, starting with the petitioner, introduce who is
13 here. If you could go to the podium to introduce yourself so the
14 microphone -- so Judge Daniels can hear you.

15 MR. MURTHY: Good morning, Your Honor. Sanjay
16 Murthy on behalf of petitioner, and with me is Ben Weed.

17 JUDGE FITZPATRICK: Will you both be arguing?

18 MR. MURTHY: I'll be presenting the argument for
19 petitioner, Your Honor.

20 MR. STEINBERG: Good morning, Your Honor. Bob
21 Steinberg, Latham & Watkins for the patent owner. Dave
22 Callahan is going to -- also with Latham & Watkins -- do the
23 presentation today.

1 MR. CALLAHAN: Good morning, Your Honor.

2 JUDGE FITZPATRICK: Each side has 60 minutes.

3 We'll obviously start with petitioner. If patent owner is going to
4 argue orally its motion to exclude, it's going to have to bring that
5 up during its time, which will come second.

6 I know there were objections to the demonstratives. To
7 the extent that either side wants to use their limited time to
8 address those, they can, but it's going to -- there's no additional
9 time to do so. And there was a lot of demonstratives that were
10 provided by both sides, and to the extent that they are not used
11 today, I can't imagine them being relied on. So they are not going
12 in the record. So keep that in mind.

13 And because Judge Daniels is remote, when you have a
14 demonstrative up on the slide, for example, petitioner's slide 1, if
15 you are going to reference it, mention the slide number so that
16 Judge Daniels can hear you.

17 With that, we'll begin with petitioner. I'm going to
18 manually keep track of time here. So let me know if you want to
19 reserve some time, and I can let you know when you're getting
20 close to the cutoff.

21 MR. MURTHY: Yes, Your Honor. I was actually
22 planning on reserving 20 minutes for rebuttal.

23 JUDGE FITZPATRICK: Okay. You may proceed.

1 MR. MURTHY: Thank you, Your Honor. May it
2 please the Board, this case presents a classic *KSR* scenario. The
3 patent claims at issue in these proceedings all relate to
4 off-the-shelf components that are performing functions that were
5 previously described in the art.

6 What the patent owner has done here is literally taken
7 its preexisting device and added a transceiver to it to perform an
8 otherwise known and established verification function. That's the
9 sum and substance of the inventions that are claimed here. And
10 the specification barely mentions the transceiver at all other than
11 to say that it exists. The patent owner certainly did not invent a
12 new transceiver in developing this invention and they don't claim
13 anywhere in their papers to have done so.

14 In preparing for this argument, I went back and again
15 reread the patents very closely to see if there was any new
16 hardware described in the specification, and I found none. The
17 patent owner has provided voluminous slides. There are over 100
18 slides in their presentation. The Board will look in vain for any
19 new hardware in any of those slides. There simply is none.

20 You had an established nitric oxide delivery device
21 that's described in the '083 patent. You had the '510 patent which
22 describes a smart handle specifically designed for use with the
23 nitric oxide delivery system of the '083 patent. That smart handle

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.