Paper No. 51
Filed: May 27, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS VI LLC,

PETITIONER,

V.

CELGENE CORPORATION,

PATENT OWNER

Case No.: IPR2015-01096
Patent No. 6,315,720

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

The Board instituted this IPR proceeding because Petitioner established a reasonable likelihood in prevailing on its assertions that Claims 1–32 of U.S. Patent 6,315,720 ("'720 patent") (Ex. 1001) are invalid as obvious. Patent Owner Celgene Corporation's ("Celgene") Response (Paper No. 40; "POR") has failed to rebut Petitioner's strong case of obviousness that the claims of the '720 patent (Ex. 1001) are obvious over *Thalomid PI* and in view of *Cunningham* and further in view of *Keravich*, *Zeldis*, and *Mundt* (collectively, the "Ground 2 references").

In their responses to the Petition, Celgene and its experts applied the wrong analysis at every step. *First*, it is clear from the testimony of their experts that Celgene failed to offer any testimony from an appropriate POSA—***both*** experts testified that the person of ordinary skill in the art ("POSA") each used in their analysis would be unable to design the claimed methods of the '720 patent—.

Second, Celgene and its experts applied the wrong standard for claim construction, ignoring the plain disclosures of the specification in favor of misconstruing arguments in the file history.

Third, Celgene proceeds through its obviousness analysis as if each prior art reference must literally disclose each and every limitation of the claims—ignoring the teachings, suggestions, and motivations in the art that render those claims obvious in view of the knowledge of a POSA. In that context, Celgene's denials of

the motivation of a POSA to combine the prior art references of Ground 2, which it bases on the purported confidentiality of material that it (or either of its experts) does not identify, are simply not credible.

In view of Celgene's flawed analyses, its arguments and evidence should be rejected, and the Board should find that claims 1–32 of the '720 patent are invalid for obviousness.

II. THE TESTIMONY OF CELGENE'S EXPERTS IS ENTITLED TO NO WEIGHT

Celgene has submitted the testimony of multiple putative experts with differing and conflicting perspectives regarding the qualifications of a person of ordinary skill in the art (a "POSA"). Through one of its experts, Celgene attempts to limit the obviousness inquiry by narrowly construing the knowledge and experience of a POSA; through the other expert, Celgene purports to adopt Petitioner's proposed POSA. Celgene's approach is convoluted, unnecessary, and at odds with its own experts' testimony.

As the Board has determined in this case in agreement with Petitioner, a POSA, as of October 2000, would typically have either a Pharm. D. or a BS in pharmacy with approximately 5–10 years of related experience and a license to practice as a registered pharmacist in any one or more of the United States. (Paper No. 21 at 9; Ex. 1021 ¶ 16.) Critically, such a POSA would "have experience in safeguards in dispensing medication." (Ex. 2061 at 185:6–8.) In designing methods

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