

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS V LLC,
Petitioner,

v.

BIOGEN MA INC.,
Patent Owner.

Case IPR2015-01136
Patent 8,399,514 B2

BIOGEN'S OPPOSITION TO REQUEST FOR REHEARING

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Abbreviation	Definition
DMF	dimethyl fumarate
MMF	monomethyl fumarate
MS	multiple sclerosis
RRMS	relapsing remitting multiple sclerosis

I. Introduction

The Board denied institution because Petitioner's cited prior art failed to disclose that DMF was useful for treating MS. As the Board correctly recognized, the cited prior art suggested only that researchers intended *to evaluate* the safety and efficacy of BG00012 in MS patients in a planned Phase II study.

Nothing in the Request for Rehearing shows any error in the Board's interpretation of the prior art or its legal analysis. Petitioner identifies no matters that the Board overlooked or misapprehended; thus, the Board did not abuse its discretion in denying institution. Contrary to Petitioner's suggestion that the Board should have accepted Dr. Linberg's testimony, the Board properly gave more weight to the actual teachings of the prior art than to Dr. Linberg's conclusory assertions. Petitioner's arguments concerning the meaning of the phrase "appears to be" and other assertions show no error in the Board's analysis. Petitioner also raises new arguments, including that the prior art allegedly provided a reasonable expectation of success, which it failed to raise in the petition.

Even if the Board were to agree with any aspect of the Request for Rehearing, institution would be inappropriate. The Board provided multiple well-supported reasons for denying institution. Further, Patent Owner's preliminary response described other compelling reasons for denying institution; for example, the petition failed to address reasonable expectation of success; did not establish

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