

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PHARMACOSMOS A/S  
Petitioner

v.

LUITPOLD PHARMACEUTICALS, INC.  
Patent Owner

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Cases<sup>1</sup> IPR2015-01490; Patent 7,754,702 B2  
IPR2015-01493; Patent 8,431,549 B2  
IPR2015-01495; Patent 8,895,612 B2

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**Notice of Response in lieu of Motion**  
(to Board Order, Paper 8)

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<sup>1</sup> As required by Paper 8, Patent Owner attests that the word-for-word identical paper is being filed in each proceeding identified in the heading.

This paper responds to the Board's Order following the October 6<sup>th</sup> conference call where Patent Owner sought authorization to file a motion for a certificate of correction. The primary request centered on writing claim 28 of the '702 patent and claim 12 of the '549 patent as independent claims, which request the Board did not grant. Paper 8 at 3.

However, the Board did authorize a motion on the secondary issue raised on the call – correcting the value of “n” from about “103” to about “10<sup>3</sup>” in claim 26 of the '702 patent and claim 12 of the '612 patent. *Id.*

As noted during the call, Petitioner has recognized multiple times that the value of “n” is “10<sup>3</sup>.” For the '702 patent, Petitioner refers to the specification's VIT-45 formula and includes a footnote to the clause “where n = 103,” stating “[i]t is assumed that 103 is intended to mean 10<sup>3</sup>.” IPR2015-01490, Petition, p. 5, n. 2. Petitioner also discusses claim 26 and includes a footnote to the clause “where n = 103,” stating “[p]resumably, ‘103’ is intended to mean ‘10<sup>3</sup>.’” *Id.*, p. 33, n. 12.

Similarly, for the '612 patent, Petitioner refers to the formula for VIT-45 in the specification and states “where n = 103 (presumably, 10<sup>3</sup>).” IPR2015-01495, Petition, p. 5-6. Moreover, Petitioner's claim chart has claim 12 reciting “where n is about 10<sup>3</sup>.” *Id.*, p. 54-55.

Petitioner is thus not prejudiced by the Board agreeing that “n” is correctly about “10<sup>3</sup>.” Patent Owner trusts that the Board will so construe the value of “n”.

In an email responding to Patent Owner's post-call inquiry, Petitioner did not consent to the motion. In the interest of a "just, speedy, and inexpensive resolution" (§ 42.1(b)) and, as a courtesy to the Board, Patent Owner notifies the Board that it elects not to file a motion requesting a certificate of correction.

Respectfully submitted,

Dated: October 20, 2015

/George E. Quillin/  
George E. Quillin  
Reg. No. 32,792  
Foley & Lardner LLP  
Counsel for Patent Owner

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing motion is being served on October 20, 2015, by filing through the Patent Review Processing System and delivering a copy via email to the counsel for Petitioner at the addresses of record:

Lisa Kole  
Baker Botts L.L.P.,  
30 Rockefeller Plaza, 45<sup>th</sup> Floor, NY, NY 10112  
Phone: 212-408-2628  
Fax: 212-259-2428  
E-mail: [lisa.kole@bakerbotts.com](mailto:lisa.kole@bakerbotts.com)  
USPTO Reg. No. 35,225

Steven Lendaris  
Baker Botts L.L.P.,  
30 Rockefeller Plaza, 45<sup>th</sup> Floor, NY, NY 10112  
Phone: 212-408-2535  
Fax: 212-259-2535  
E-mail: [steven.lendaris@bakerbotts.com](mailto:steven.lendaris@bakerbotts.com)  
USPTO Reg. No. 53,202

Paul Ragusa  
Baker Botts L.L.P.,  
30 Rockefeller Plaza, 45<sup>th</sup> Floor, NY, NY 10112  
Phone: 212-408-2588  
Fax: 212-259-2588  
E-mail: [paul.ragusa@bakerbotts.com](mailto:paul.ragusa@bakerbotts.com)  
USPTO Reg. No. 38,587

/George E. Quillin/  
George E. Quillin  
Registration No. 32,792  
Counsel for Patent Owner