

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Lupin Ltd. and Lupin Pharmaceuticals Inc.

Petitioners

v.

Pozen, Inc.

Patent Owner

Case IPR2015-01774

U.S. Patent No. 8,852,636

PETITIONER'S REQUEST FOR REHEARING

PURSUANT TO 37 C.F.R. § 42.71(d)

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Pursuant to 37 C.F.R. § 42.71(d), Lupin Ltd. and Lupin Pharmaceuticals Inc. (collectively and individually, “Petitioner”) hereby respectfully request rehearing of the portions of the Board’s Decision (Paper No. 15, March 1, 2016) regarding Statutory Ground 2 of the Petition¹ asserting claims 1-6 and 13-15 are unpatentable under 35 U.S.C. § 103(a) as obvious over the ’556 patent² in view of the ’225 patent; and Statutory Ground 5 asserting claims 1-6 and 13-15 are obvious over the ’225 patent³ in view of Chandramouli⁴ and WO ’185⁵.

I. Introduction

Concerning Ground 2, the Board’s Decision should be reconsidered and reversed because it failed to give appropriate weight to the knowledge and reasoning of a person or ordinary skill in the art, contrary to the legal standard for

¹ References and citations herein to “Petition” or “Pet.” are to Petitioner’s Corrected Petition, Paper No. 4, filed August 31, 2015.

² U.S. Patent No. 6,544,556, claiming priority date of Sept 11, 2000 (Exh. 1004).

³ U.S. Patent No. 5,698,225, issued Dec. 16, 1997 (Exh. 1007).

⁴ Chandramouli et al., Prevention and management of NSAID-Induced Gastropathy, Journal of Pharmaceutical Pain and Symptom Control, 8(4):27-40, 2000, published February 23, 2001 (Exh. 1011).

⁵ Published Patent Appl. WO/2000/026185, published May 11, 2000 (Exh. 1012).

obviousness set forth in *KSR*. See *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Notably, the Board overlooked the reasoning set forth in the Petition and Dr. Banakar's Declaration and erroneously found Dr. Banakar's statements "conclusory." Additionally, the Board's evaluation of Pilbrant ignored the full disclosure as understood by a person of ordinary skill in the art and erroneously focused on one phrase of the publication.

Concerning Ground 5, the Board misapprehended a statement in WO'185 because it overlooked a distinction between sodium bicarbonate solid and solution and thus committed a clear error in its analysis.

II. Standard Of Law

The Board reviews requests for rehearing under an "abuse of discretion" standard. 37 C.F.R. § 42.71(c). "An abuse of discretion occurs when a district court exercises its discretion 'based upon an error of law or clearly erroneous factual findings' or commits 'a clear error of judgment in weighing relevant factors.'" *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1336 (Fed. Cir. 2013). "[C]ourts have recognized three grounds justifying reconsideration: 1) an intervening change in controlling law; 2) the availability of new evidence; and 3) the need to correct clear error or manifest injustice." *Board of Trustees of Bay Med. Center v. Humana Military Healthcare Svcs., Inc.*, 447 F.3d 1370, 1377 (Fed. Cir. 2006). For example, the Board has granted institution of claims where it

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