

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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COALITION FOR AFFORDABLE DRUGS X LLC,  
Petitioner,

v.

ANACOR PHARMACEUTICALS, INC.,  
Patent Owner.

Case No. IPR2015-01776  
Patent No. 7,582,621

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**PATENT OWNER'S MOTION FOR OBSERVATIONS  
REGARDING THE CROSS-EXAMINATION  
TESTIMONY OF STEPHEN B. KAHL, Ph.D.**

## **I. Introduction**

In accordance with: (i) The Trial Practice Guide, Federal Register Vol. 77, No. 157, 48756 at 48767–68 and (ii) the Scheduling Order (Paper No. 25) as modified by the Joint Notice of Stipulation to Adjust Schedule (Paper No. 28) and the Second Joint Notice of Stipulation to Adjust Schedule (Paper No. 31), Patent Owner hereby submits the instant Motion for Observations Regarding the Cross-Examination Testimony of Stephen B. Kahl, Ph.D., taken on September 14, 2016. The transcript of this testimony has been filed as Exhibit 2206.

Patent Owner requests that the Board enter the instant Motion and consider the observations. Observations 1–2 below pertain to the deposition testimony of Stephen B. Kahl, Ph.D., obtained on September 14, 2016, after Patent Owner filed its last substantive paper. In addition, and in accordance with the Trial Guide, each of observations 1–2 below provides in a single paragraph a concise statement of the relevance of the precisely identified testimony to a precisely identified argument.

## **II. Observations**


1. In Ex. 2206 at 66:1-6, Dr. Kahl testified that a POSA would have had a reasonable expectation of successfully treating onychomycosis based on the disclosure of Austin alone. This testimony is relevant because this argument was not in the Petition and was presented for the first time with Petitioner's Reply. *See*

Petition p. iii (asserting the following three grounds for invalidity: (1) obviousness over Austin in view of Brehove, (2) obviousness over Austin in view of Freeman, and (3) obviousness over Austin in view of Freeman and Sun).

2. In Ex. 2206 at 61:14-17, Dr. Kahl testified that Petitioner's Exhibit 1028 (titled "Drug delivery to the nail following topical application") "is rather outside my area of expertise." At 62:14-17, Dr. Kahl testified that Exhibit 1028 was "sufficiently outside my area of expertise as to be not worth reading" beyond the abstract. At 67:21-22, during his redirect examination, Dr. Kahl testified that "the subject matter of [Exhibit] 1028 is not directly related to my expertise in boron." At 62:18-63:1, Dr. Kahl testified that in order "to review or understand" Exhibit 1028 "presumably one would need expertise in -- in drug delivery." This is relevant because Dr. Kahl provided testimony and opinions in the field of drug delivery. For example, in his Reply Declaration, Dr. Kahl opined on toxicity concerns as related to "method of administration." Ex. 1043 ¶ 23. This is also relevant because Petitioner's Reply Brief cites Dr. Kahl's Reply Declaration to support arguments related to method of administration. *See* Reply pp. 4 & 9-10.

Date: September 27, 2016

Respectfully submitted,

By   
Andrea G. Reister

Registration No. 36,253

COVINGTON & BURLING LLP

One CityCenter, 850 Tenth Street, NW

Washington, DC 20001

(202) 662-6000

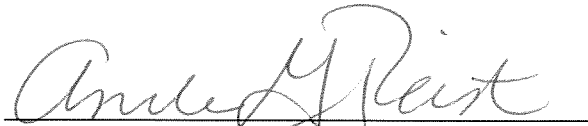
Attorney for Patent Owner

## CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that on this 27th day of September 2016, the foregoing Patent Owner's Motion for Observations Regarding the Cross-Examination Testimony of Stephen B. Kahl, Ph.D. was served by electronic mail, by agreement of the parties, on the following counsel of record for petitioner.

Jeffrey D. Blake  
Kathleen E. Ott  
Peter A. Gergely  
Ryan James Fletcher  
Brent E. Routman  
Merchant & Gould PC  
KerydinIPR@merchantgould.com

Date: September 27, 2016

  
Andrea G. Reister, Esq.  
Reg. No.: 36,253