

[trials@uspto.gov](mailto:trials@uspto.gov)

IPR2015-01776, Paper No. 69

IPR2015-01780, Paper No. 69

IPR2015-01785, Paper No. 69

December 15, 2016

571-272-7822

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

COALITION FOR AFFORDABLE DRUGS X LLC,  
Petitioner,

v.

ANACOR PHARMACEUTICALS, INC.,  
Patent Owner.

---

Case IPR2015-01776 (Patent 7,582,621 B2)

Case IPR2015-01780 (Patent 7,767,657 B2)

Case IPR2015-01785 (Patent 7,767,657 B2)

---

Held: November 3, 2016

---

BEFORE: MICHAEL P. TIERNEY, GRACE KARAFFA  
OBERMANN, and TINA E. HULSE, Administrative Patent  
Judges.

The above-entitled matter came on for hearing on Thursday,  
November 3, 2016, commencing at 1:00 p.m., at the U.S. Patent  
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case IPR2015-01776 (Patent 7,582,621 B2)  
Case IPR2015-01780 (Patent 7,767,657 B2)  
Case IPR2015-01785 (Patent 7,767,657 B2)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

PETER A. GERGELY, ESQUIRE  
JEFFREY BLAKE, ESQUIRE  
RYAN JAMES FLETCHER, Ph.D., ESQUIRE  
KATHLEEN E. OTT, ESQUIRE  
Merchant & Gould  
1801 California Street, Suite 3300  
Denver, Colorado 80202-2654

ON BEHALF OF PATENT OWNER:

ANDREA G. REISTER, ESQUIRE  
JESSICA L. PAREZO, ESQUIRE  
EVAN KRYGOWSKI, ESQUIRE  
Covington & Burling, LLP  
One City Center  
850 Tenth Street, N.W.  
Washington, D.C. 20001-4956

Case IPR2015-01776 (Patent 7,582,621 B2)  
Case IPR2015-01780 (Patent 7,767,657 B2)  
Case IPR2015-01785 (Patent 7,767,657 B2)

1 P R O C E E D I N G S

2 - - - - -

3 JUDGE TIERNEY: Welcome everyone. For today's  
4 hearing is a consolidated hearing for IPR2015-01776, also 01780  
5 and also 01785. The parties each were given 45 minutes to  
6 present their case today. We do have that understanding,  
7 however, that if we do have questions and the parties need  
8 additional time, we are willing to allow for additional time today.

9 Before I begin, I would like to know for petitioner, do  
10 you wish to reserve time for rebuttal today?

11 MR. GERGELY: Yes, Your Honor, I do. I'll probably  
12 take about 35 minutes in our opening presentation and I would  
13 like to reserve about ten minutes for rebuttal.

14 JUDGE TIERNEY: Also before I begin, do the parties  
15 have any procedural questions regarding the hearing today?

16 MR. GERGELY: No, Your Honor, thank you.

17 MS. REISTER: No.

18 JUDGE TIERNEY: So petitioner, when you are ready,  
19 would you please begin. And I'll ask, do you wish to have a  
20 clock letting you know how time is running down?

21 MR. GERGELY: That would be great. I appreciate  
22 that. Thank you.

23 JUDGE TIERNEY: Ready when you are.

Case IPR2015-01776 (Patent 7,582,621 B2)

Case IPR2015-01780 (Patent 7,767,657 B2)

Case IPR2015-01785 (Patent 7,767,657 B2)

1           MR. GERGELY: Thank you. My name is Peter  
2 Gergely. I'm counsel for the petitioner, Coalition for Affordable  
3 Drugs X LLC. With me today in the courtroom is lead counsel,  
4 Jeff Blake, Ryan Fletcher, and Kathy Ott. And we are all of the  
5 law firm Merchant & Gould. Kathy, Ryan, and I are from the  
6 Denver office and Jeff is from the Atlanta, Georgia office. And I  
7 will be handling the argument today.

8           First of all, I would like to thank the Board for its time  
9 and attention to this matter. I think it's an understatement to say  
10 that this is a voluminous record and we appreciate your time and  
11 effort in looking at those materials and being with us today to  
12 listen to our arguments.

13           There are two patents at issue in this case -- in these  
14 cases. One is what we refer to as the '621 patent and the other is  
15 the '657 patent. The '621 patent is the subject of the 1776 case  
16 and the '657 patent is the subject of the 1780 and 85 cases. We  
17 don't think there's any real dispute that all of the elements of the  
18 claims in the '621 and '657 are shown in the prior art. We believe  
19 that the real dispute here between the parties is whether the  
20 petitioner has articulated a reason to combine or reasons to  
21 combine the references under *KSR* as well as have they have  
22 identified an analysis of a reasonable expectation of success also  
23 under the *KSR* decision.

Case IPR2015-01776 (Patent 7,582,621 B2)

Case IPR2015-01780 (Patent 7,767,657 B2)

Case IPR2015-01785 (Patent 7,767,657 B2)

1           And we think we have. Petitioner articulated those  
2 reasons in detail in its petition for each and every claim. And the  
3 reasons and analysis were supported by their experts, Dr. Kahl  
4 and Dr. Murthy. For example, with respect to the '621 patent  
5 which has much overlap in the subject matter with '657, petitioner  
6 identified three reasons to combine the Austin and Brehove  
7 reference. One, both references taught the use of boron-based  
8 compounds as fungicides. Two, both references also disclosed  
9 the use of boron-based compounds to specifically inhibit *Candida*  
10 *albicans*, which is a known cause of onychomycosis. There's no  
11 dispute there. Three, Austin discloses boron-based compounds  
12 that have lower molecular weight than the successful compounds  
13 of Brehove and are therefore more likely to penetrate the nail  
14 barrier. That was cited in the petition as supported by the Murdan  
15 reference.

16           But the analysis didn't stop there. Petitioner then  
17 identified five reasons why a person of ordinary skill in the art  
18 would have had a reasonable expectation of success in combining  
19 the references to arrive at the claimed inventions. One,  
20 boron-based compounds were well-known biocides. That's  
21 shown by both references, Austin and Brehove. Two, tavaborole  
22 shares common structural features with the boron compounds of  
23 Brehove, namely all are boron heterocycles. They are not exactly  
24 the same compound. That's obvious. But they are both boron

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.