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IPR2015-01835, Paper No. 54

IPR2015-01836, Paper No. 56

January 18, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS VIII, LLC,
Petitioner,

v.

THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA,
Patent Owner.

Case IPR2015-01835 (Patent 8,618,135 B2)

Case IPR2015-01836 (Patent 7,932,268 B2)

Held: December 1, 2016

BEFORE: MICHAEL P. TIERNEY, LORA M. GREEN,
GRACE KARAFFA OBERMANN, Administrative Patent
Judges.

The above-entitled matter came on for hearing on Thursday,
December 1, 2016, commencing at 1:59 p.m., at the U.S. Patent
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case IPR2015-01835 (Patent 8,618,135 B2)

Case IPR2015-01836 (Patent 7,932,268 B2)

APPEARANCES:

ON BEHALF OF PATENT OWNER:

WILLIAM G. JAMES, ESQUIRE
Goodwin Procter LLP
901 New York Avenue NW
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--and--

KEVIN S. PRUSSIA, ESQUIRE
Wilmer Cutler Pickering Hale and Dorr LLP
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Boston, Massachusetts 02109

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Case IPR2015-01836 (Patent 7,932,268 B2)

1 case-in-chief as to the challenged claims and may reserve rebuttal
2 time to respond to the arguments made by the Patent Owner.

3 Thereafter, Patent Owner will respond to the Petitioner's case and
4 may also address its Motion to Amend. Patent Owner may
5 reserve rebuttal time to address Petitioner's arguments as to the
6 Motion to Amend.

7 Counsel for Petitioner, you may proceed. Would you
8 like to reserve rebuttal time?

9 DR. GONSALVES: May I believe reserve 15 minutes
10 of rebuttal time?

11 JUDGE GREEN: Whenever you're ready.

12 MR. GONSALVES: We're going to go into all the
13 nitty-gritty details in just a moment, but one of the overarching
14 themes of all the arguments is that Patent Owner's arguments are
15 not commensurate with the scope of the claims and you'll see that
16 theme over and over and over again through my presentation.

17 Throughout the day today, I'll just be presenting
18 documents from the record in this case.

19 JUDGE GREEN: And if you could refer to where
20 you're finding this in the record as to each exhibit, that would
21 help us some when we look at the transcript.

22 DR. GONSALVES: Sure. So this is the Patent Owner's
23 Response, page 7.

24 And one of the things that the Patent Owner argued was
25 that the claim should be construed according to the same standard

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1 that's applicable in District Court and it states, while the Board
2 has adopted the broadest reasonable interpretation, a claim
3 construction standard by regulation, the Patent Owner
4 respectfully submits that this standard is legally impermissible for
5 the reasons now being considered by the Supreme Court.

6 Since the Patent Owner wrote this, the Supreme Court,
7 as everybody knows, has unanimously held that it is legally
8 permissible for the Board to use the BRI standard in IPRs and
9 that was the *Cuozzo Speed*. It was actually the very first IPR that
10 was on appeal.

11 According to the Supreme Court in that case, the BRI
12 regulation represents a reasonable exercise of the rulemaking
13 authority that Congress delegated to the Patent Office, which
14 encourages the Applicant to draft the claims narrowly. This has
15 been used by the Patent Office for more than a hundred years and
16 it is not unfair to the Patent Holder in any obvious way.

17 JUDGE GREEN: So are you making these arguments
18 in response to Patent Owner's request that we interpret the claims
19 to basically mean the forced titration.

20 DR. GONSALVES: Sure. This is my next -- what I'm
21 presenting right now.

22 Now, one of the things in light of this more narrow
23 claim construction standard that the Patent Owner has indicated
24 that the Board should follow, which the Supreme Court has now
25 said the Board should not follow, it says here -- this is page 36 of

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