

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

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**ARGENTUM PHARMACEUTICALS LLC, MYLAN PHARMACEUTICALS  
INC., BRECKENRIDGE PHARMACEUTICAL, INC., AND ALEMBIC  
PHARMACEUTICALS, LTD.,  
Petitioners,**

**v.**

**RESEARCH CORPORATION TECHNOLOGIES, INC.,  
Patent Owner.**

Case No. IPR2016-00204<sup>1</sup>  
Patent No. RE 38,551

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**PATENT OWNER'S IDENTIFICATION OF  
PETITIONERS' ARGUMENTS AND EVIDENCE  
OUTSIDE THE SCOPE OF A PROPER REPLY AND IMPROPER  
TECHNIQUES THAT CIRCUMVENT WORD COUNT**

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<sup>1</sup> Case IPR2016-01101, Case IPR2016-01242, and Case IPR2016-01245 have been  
joined with this proceeding.

Pursuant to the Board's authorization (Ex. 2191), Patent Owner hereby identifies Petitioners' arguments and evidence outside the scope of a proper Reply, and the improper techniques that circumvent word count.

### **I. Arguments and evidence relating to the LeGall Thesis**

See Reply § XIII, p. 28 l. 13-p. 29 l. 7 (“Certain POR arguments are plainly rebutted by LeGall’s express teaching that lacosamide *‘may have good anticonvulsant activity’* given the ‘close structural analogy of this compound with 86b.’ ...”) (emphasis in original); Reply p. 27 ll. 4-7 & ll. 11-15, p. 18 ll. 7-8; Ex. 1084 ¶¶ 210, 193, 173, 160, 16, 145 (including Table); Ex. 1084 ¶ 196, p. 74, ll. 12-14; Ex. 1084 ¶ 220, p. 81, ll. 10-12; Ex. 1084 ¶ 71, p. 28, ll. 1-4; Ex. 1156 and Ex. 2035, 62:7-10, 252:16-253:20 (new evidence regarding public accessibility); cf. Institution Decision (Paper 19) p. 12, ll. 15-18 (“... we are not persuaded that Petitioner has made a threshold showing that the LeGall thesis was sufficiently publicly accessible to qualify as a ‘printed publication’ under § 102(b).”).

### **II. The '301 patent as rationale to support Compound 31**

Reply p. 9, l. 19-p. 10, l. 1 & p. 2, ll. 1-2 (“the prior art taught a clear path from Compound 31 [methoxyamino], specifically claimed in the ‘729/’301 patents”); Reply p. 9, ll. 10-12 (“the fact that the ‘729/’301 patents expressly covered and claimed Compound 31 [methoxyamino] would confirm a POSA’s reasonable expectation of the lead compound’s utility”); See Ex. 1084 ¶ 73 (“... a

POSA looking at these two patents [(i.e., '301 & '729)] in 1996 would have come to the conclusion that FAAs are potential lead compounds ...”); Reply p. 13, l. 17-p. 14, l. 3; Reply p. 7, l. 17-p. 8, l. 2; Ex. 1084 ¶¶ 60, 123-25, 97-99, 24-30, 104, 185, 197, 213-14; cf. Petition §§ VII.E & VII.F (Grounds 3A & 3B); Petition p. 46, l. 19-p. 47, l. 3 (“*methoxymethyl* is specifically claimed . . . in the ‘301 patent”) (emphasis added); Petition p. 19, l. 11-p. 21, l. 11 & Ex. 1002, ¶¶ 44-49, 123 (no mention of methoxyamino).

### **III. Unmet need arguments based on levetiracetam (Keppra®)**

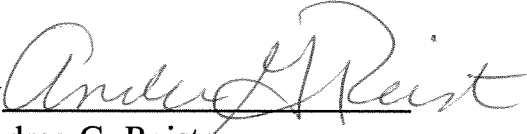
Reply, p. 21, l. 8-p. 22, l. 13 (“levetiracetam (Keppra) meets the alleged ‘unmet need’”); Ex. 1087 § XIII, ¶¶ 95-117 (“Levetiracetam Satisfied the Long-Felt Need Identified by Dr. Bazil ... ”); Reply p. 1, ll. 10-12 & 15-16, p. 6, ll. 8-10, p. 17, ll. 12-13, p. 18, ll. 1-2 & 14-15, p. 20, ll. 1-2 & 8-10; Ex. 1087 ¶¶ 40-53, 60-64, 71, 78, 82, 89, 118-26, 133-38, 143, 148-59; Ex. 1084 ¶¶ 63, 71, 204-06, 221, 59, p. 22, ll. 11-17; cf. Petition p. 54, ll. 7-12 (“any alleged unmet need ... must be evaluated against lacosamide’s rivals at the time—including gabapentin, lamotrigine, felbamate, and vigabatrin”) (no mention of levetiracetam).

### **IV. Improper techniques that circumvent the word count by 195 words**

Reply p. 2, ll. 3-5 & 7-11, top image (17 words), middle image (42 words); Reply p. 11, ll. 6-7 & 12-18, top image (12 words), bottom image (54 words); Reply (throughout) (Ex.# not Ex. #, 140 words); cf. Petition & Ex. 1084 (Ex. #).

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Respectfully submitted,

By 

Andrea G. Reister

Registration No.: 36,253

Jennifer L. Robbins

Registration No.: 61,163

Enrique D. Longton

Registration No.: 47,304

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 5th day of December 2016, the foregoing **Patent Owner's Identification of Petitioners' Arguments and Evidence Outside the Scope of a Proper Reply and Improper Techniques that Circumvent Word Count** was served by electronic mail, by agreement of the parties, on the following counsel of record for Petitioners.

PETITIONER (IPR2016-00204)  
Matthew J. Dowd (mjdowd@dowdpllc.com)  
DOWD PLLC  
William G. Jenks (wjenks@jenksiplaw.com)  
JENKS IP LAW

PETITIONER (IPR2016-01101)  
Steven W. Parmelee (sparmelee@wsgr.com)  
Michael T. Rosato (mrosato@wsgr.com)  
Jad A. Mills (jmills@wsgr.com)  
WILSON SONSINI GOODRICH & ROSATI

PETITIONER (IPR2016-01242)  
Matthew L. Fedowitz (mfedowitz@merchantgould.com)  
Daniel R. Evans (devans@merchantgould.com)  
MERCHANT & GOULD P.C.

PETITIONER (IPR2016-01245)  
Gary J. Speier (gspeier@carlsoncaspers.com)  
Jeffer Ali (jali@carlsoncaspers.com)  
CARLSON, CASPERS, VANDENBURGH, LINDQUIST & SCHUMAN, P.A.

Date: December 5, 2016



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