IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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| MALLINCKRODT HOSPITAL PRODUCTS IP LTD., INO THERAPEUTICS LLC and IKARIA, INC. | ) | C. A. No.: 15-170-GMS |
| Plaintiffs, | ) | |
| v. | ) | |
| PRAXAIR DISTRIBUTION, INC. and PRAXAIR, INC., | ) | |
| Defendants. | ) | |

**PRAXAIR'S OPENING CLAIM CONSTRUCTION BRIEF**
**REGARDING U.S. PATENT NO. 8,846,112**


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Dated: March 17, 2016

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## I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Although this case involves ten patents, the parties only dispute the meaning of one term: "pharmaceutically acceptable," found in the preamble of claims 1-11 of U.S. Pat. No. 8,846,112 ("the '112 patent"). While Mallinckrodt Hospital Products IP Ltd., INO Therapeutics LLC and Ikaria Inc. (collectively "Plaintiffs") request construction of this straightforward phrase, Defendants Praxair Distribution, Inc. and Praxair, Inc. (collectively, "Defendants") submit that no construction is necessary.

Not surprisingly, Plaintiff's request for construction of a clear term like "pharmaceutically acceptable" is motivated by a desire to undercut an unfavorable ruling from the Patent Trial and Appeal Board (the "Board").[1] In instituting an *Inter Partes* Review proceeding, the Board found that several limitations of the claims of the '112 patent contain printed matter, without a functional relationship to other claim elements. *See* Ex. A, Institution of *Inter Partes* Review, Paper No. 12 at 9 (July 29, 2015). Therefore, the Board did not give those limitations any patentable weight. *Id.* Plaintiffs now seek a ruling that 1) finds the preamble of claims 1-11 to be limiting; and 2) construes the term "pharmaceutically acceptable," found in the preamble, to have an unnecessarily narrow meaning. As is apparent from Plaintiff's briefing in front of the Board, Plaintiff seeks such a ruling in order to bolster its argument that the printed matter claim limitations are *functionally related* to the "pharmaceutically acceptable" preamble such that these limitations should be given patentable weight. *See* Ex. B, Patent Owner's Response to Petition for *Inter Partes* Review, Paper No. 22 at 23-33 (Nov. 5, 2015).

[1] The '112 patent is currently being reviewed in an *Inter Partes* Review proceeding. *See Praxair Distribution, Inc. v. INO Therapeutics LLC,* IPR2015-00529.

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