

HEARING BEFORE THE BOARD

1 UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4 PRAXAIR DISTRIBUTION, INC.

5 Petitioner

6 v.

7 INO THERAPEUTICS, LLC,

8 Patent Owner

9 Case IPR2015-00529

10 U.S. Patent No. 8,846,112 B2

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13 HEARING BEFORE THE BOARD

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15 The Telephonic hearing was held on Tuesday,  
16 January 5, 2016, commencing at 2:36 p.m., at the Law  
17 Offices of Latham and Watkins, LLP, 555 Eleventh Street,  
18 N.W., Suite 1000, Washington, D.C. 20004, before Steven  
19 Poulakos, RPR, Notary Public.

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25 REPORTED BY: Steven Poulakos, RPR

1 APPEARANCES:

2

3 ON BEHALF OF PRAXAIR DISTRIBUTION, INC.

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24 ALSO PRESENT: Kenneth D. Goetz, Esquire. In-house

25 counsel for Mallinckrodt Pharmaceuticals

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PROCEEDINGS

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MR. SCHULER: Hello. These are the participants at the deposition, counsel for both parties and the court reporter.

MR. MURTHY: Hi, Your Honor, Sanjay Murthy also on the call for Petitioner.

MS. KERRANE: Can you hear me as well?

MR. MURTHY: I can.

THE COURT: Good afternoon. This is Judge Green, and I have Judge Hulse on the line with me. My understanding, this is a conference call on IPR2015-00529 regarding a deposition that's ongoing.

Who do I have for petitioner.

MR. MURTHY: Your Honor, Sanjay Murthy on behalf of petitioner.

MS. KERRANE: And Sara Kerrane also on behalf of petitioner.

THE COURT: And then who do I have for patent owner?

MR. SCHULER: Ken Schuler on behalf of the patent owner, Your Honor.

THE COURT: Okay. Thank you.

MR. SCHULER: I just wanted to let the Court know, we also have additional counsel for the

1 patent owner, including in-house counsel, and there's  
2 no objection from Petitioner as to their participation.

3 We also have the court reporter still here  
4 for the deposition, but the deponent is not in the  
5 room.

6 THE COURT: Okay, and is the court reporter  
7 doing a transcript of this call.

8 THE COURT REPORTER: Yes, Your Honor.

9 THE COURT: So if one of the parties could  
10 arrange to have the transcript filed in this case as an  
11 exhibit, when it's possible, I would appreciate it.

12 MR. SCHULER: We will arrange for it, Your  
13 Honor. This is counsel for the Respondent.

14 THE COURT: Okay. I only have very limited  
15 information about this call. So I'm not sure who  
16 requested it. So whoever requested the call can go  
17 ahead and start.

18 MR. SCHULER: Yes, Your Honor, it's Ken  
19 Schuler. We did request the call.

20 The issue is the scope of the deposition.  
21 We have a question about a nonprior art reference,  
22 which is the current labeling for the product.

23 The question proceeded to say about a  
24 contraindication that's in the label and what's not a  
25 contraindication in the label. There is parallel

1 District Court litigation that involves questions of  
2 infringement.

3 I asked counsel for the Petitioner to  
4 explain how that would be would relevant to issues of  
5 102, 103 that are at issue with the declaration, and at  
6 issue with regard to the institution decision. Counsel  
7 declined to provide any explanation, and so we would  
8 ask that any such questioning, because it appears to be  
9 calculated to go to issues other than the issues at  
10 hand, not be permitted.

11 THE COURT: Now, was there anything about  
12 the product label or anything else in the declaration  
13 that the declarant is being cross-examined on?

14 MR. SCHULER: The only thing that counsel  
15 have pointed me to is a paragraph that recites the file  
16 history that says that a labeling supplement was  
17 submitted.

18 I don't know if counsel has anything else  
19 in mind, but she declined to identify anything else.

20 MS. KERRANE: Actually, Your Honor, I  
21 referred counsel here to paragraph 65 in the deponent's  
22 declaration in which he distinctly discusses this and,  
23 in fact, the new label is an exhibit to his  
24 declaration, and he discusses the fact that the  
25 prescribing information of the INOmax now includes

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