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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

ALLERGAN, INC.,
Patent Owner.

Case No. IPR2016-01130
Patent No. 8,633,162

**PETITION FOR INTER PARTES REVIEW OF
U.S. PATENT NO. 8,633,162**

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I. INTRODUCTION

Mylan Pharmaceuticals Inc. (“Petitioner”) requests review of U.S. Patent No. 8,633,162 to Acheampong *et al.* (“the ’162 patent,” EX1001) that issued on January 21, 2014. PTO records indicate the ’162 patent is assigned to Allergan, Inc. (“Patent Owner”). This Petition demonstrates that there is a reasonable likelihood that claims 1-24 of the ’162 patent are unpatentable for failing to distinguish over prior art. Additional petitions are being filed to address related patents that are assigned to Patent Owner. All challenged patents are continuations from the same family and are terminally disclaimed over one another. The patents claim an ophthalmic emulsion for the treatment of overlapping ocular disorders, or conventional methods of administering the emulsion.

The ’162 patent claims concern conventional methods of treating dry eye disease by the “twice a day” topical ophthalmic administration of an emulsion containing cyclosporin A (“CsA”), castor oil, and other standard ingredients, as generally claimed in U.S. Patent No. 8,685,930. Each element of the emulsion, including the claimed CsA and castor oil percentages and methods for administering them to treat dry eye disease, were disclosed in a single prior art reference (Ding ’979). During prosecution of a parent application, applicants admitted the claimed emulsion containing 0.05% CsA and 1.25% castor oil “is squarely within the teaching of the Ding [’979] reference” and “would have been obvious” to a person of skill in the art at the time of the invention. EX1005, 0435; EX1002, ¶18. A second 102(b) prior art reference, Sall, discloses twice-daily administration of a 0.05% CsA-in-castor oil emulsion for the same purpose.

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