

Paper No. \_\_\_\_\_

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARGENTUM PHARMACEUTICALS LLC

Petitioner,

v.

ALLERGAN, INC.,

Patent Owner.

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U.S. Patent No. 8,629,111

*Inter Partes* Review No. IPR2016-01232

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**PETITION FOR INTER PARTES REVIEW OF  
U.S. PATENT NO. 8,629,111**

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## I. INTRODUCTION

Argentum Pharmaceuticals LLC (“Petitioner”) requests review of U.S. Patent No. 8,629,111 to Acheampong *et al.* (“the ’111 patent,” EX1001) that issued on January 14, 2014. PTO records indicate the ’111 patent is assigned to Allergan, Inc. (“Patent Owner”). This Petition demonstrates a reasonable likelihood that claims 1-27 of the ’111 patent are unpatentable in view of the identified prior art.

The ’111 patent claims a topical ophthalmic emulsion as in related U.S. Patent No. 8,685,930 but further recites that cyclosporin A (“CsA”) is the only peptide present in the emulsion. Each element of the emulsion, including the claimed CsA and castor oil percentages, preferred ratios for combining them, and CsA as the only peptide present in the emulsion, was disclosed in a single prior art reference (Ding ’979) for use in topical ophthalmic emulsions to treat the same dry eye disease, such as keratoconjunctivitis sicca (“KCS”). In fact, during prosecution of a parent application, applicants admitted that 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.

Four years later, in prosecuting the ’111 patent as a continuation application, applicants changed course and attempted to withdraw these admissions. EX1004,

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