

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX INC., APOTEX CORP., APOTEX
PHARMACEUTICALS HOLDINGS INC., AND APOTEX
HOLDINGS, INC.,
Petitioner,

v.

OSI PHARMACEUTICALS, INC.,
Patent Owner.

Case IPR2016-01284
Patent 6,900,221 B1

Held: October 3, 2017

Before LORA M. GREEN, RAMA G. ELLURU, and ZHENYU
YANG, *Administrative Patent Judges*.

Case IPR2016-01284
Patent 6,900,221 B1

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Tuesday, October 3, 2017, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 Before we start, I would like to start with a few
2 housekeeping notes. First, we note that the demonstratives are
3 only as an aid to trial and are not evidence of record. That being
4 said, we note that patent owner has objected to a number of
5 petitioner's demonstratives and we will rule on those objections in
6 the final written decision.

7 Counsel for petitioner, you may proceed. Would you
8 like to reserve time for rebuttal?

9 MR. COBLENTZ: Yes. I would like to reserve ten
10 minutes. And we have hard copies of the slides. Would that be
11 helpful?

12 JUDGE GREEN: Yes, please. And you may begin
13 when you are ready.

14 MR. COBLENTZ: Good afternoon. May it please the
15 Board, my name is Blake Coblentz and I'm here on behalf of
16 petitioner, Apotex, along with my colleague, Eric Choi.

17 Now, if we go to slide 2, I think the first place I want to
18 start is kind of give you an overview of where I plan to go today.
19 And the first thing that I would like to handle in this argument is
20 the petitioner's case that claims 44 through 46 and 53 of the '221
21 patent are prima facie obvious. In doing so, I want to go through
22 the references and really show that the primary reference, Schnur,
23 really has everything in it, and everything in it from the
24 compound Erlotinib to therapeutically effective amount treating a
25 mammal to treating lung cancer. The one thing that it doesn't

1 necessarily have is differentiating that lung cancer is NSCLC.
2 And that's where Gibbs and the OSI 10-K come in because Gibbs
3 and the OSI 10-K both have Erlotinib. They single out Erlotinib
4 specifically, and they also single out the treatment of NSCLC
5 specifically as well.

6 JUDGE ELLURU: Counsel, what is the disclosure,
7 what is the teaching in OSI that's not available in Gibbs relevant
8 to the challenged claims?

9 MR. COBLENTZ: I think that the teaching in OSI
10 10-K is very duplicative of Gibbs. It teaches a very similar thing.
11 It's an OSI publication that actually has the fact that NSCLC was
12 targeted, actually that it had completed -- OSI had completed
13 Phase I trials and was moving into Phase II trials, and it had the
14 fact that it was an EGFR inhibitor. So I think they are very
15 duplicative. I think Gibbs maybe gives even a little bit more than
16 that by calling out that Erlotinib had a good anticancer activity as
17 well.

18 But I think that the original -- we originally put in the
19 OSI 10-K for the situation where they would try to swear behind
20 the priority date, which they did not do, which would have
21 rendered Gibbs maybe not prior art. But since that was not done
22 and it was undisputed that the priority date was March 30th of
23 2000, I think the OSI 10-K and Gibbs disclosed very similar type
24 of things.

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