UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner

v.

BOEHRINGER INGELHEIM INTERNATIONAL GMBH,
Patent Owner.

Case IPR2016-01563
Patent 8,673,927 B2

PETITIONER MYLAN PHARMACEUTICALS INC.'S MOTION FOR REHEARING UNDER 37 C.F.R. § 42.71

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REGULATIONS

Petitioner Mylan Pharmaceuticals Inc. respectfully requests rehearing of the Board's February 3, 2017 decision denying *inter partes* review of claims 2–9 and 11–26 (collectively the "Challenged Claims") of U.S. Patent No. 8,673,927 as obvious based on Petitioner's Ground 3.[1] (Paper 16 at 22). Rehearing is warranted because the Board's decision was based on an incorrect legal standard for obviousness.

I. INTRODUCTION

Under Federal Circuit precedent, the Challenged Claims are presumed obvious because the claimed linagliptin dosages and dosage ranges fall squarely within the prior art range disclosed in the '510 Publication (Ex. 1003), and Patent Owner did not meet its burden to overcome this presumption. *See Galderma Labs., L.P. v. Tolmar, Inc*., 737 F.3d 731, 737–38 (Fed. Cir. 2013) (Patent Owner has burden of overcoming obviousness presumption "where there is a range disclosed in the prior art, and the claimed invention falls within that range").

The Challenged Claims are directed to administrating specified dosages and dosage ranges of a combination of the drugs metformin and linagliptin to treat patients with type II diabetes. (Paper 2, Tables 2–3). It is undisputed that, as of the

[1] The Board instituted *inter partes* review on claims 1 and 10 based on Ground 3 but denied review of the Challenged Claims. (Paper 16 at 22–23). The Board also denied *inter partes* review of claims 18–26 as anticipated over the '510 Publication (Ex. 1003) (Ground 1) and of claims 1–26 as obvious based on Ground 2. (*Id*. at 11, 14–15). Petitioners do not seek rehearing of the Board's decision on Grounds 1 or 2.

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