

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS INC.,  
Petitioner

v.

BOEHRINGER INGELHEIM INTERNATIONAL GMBH,  
Patent Owner.

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Case IPR2016-01566  
Patent 9,173,859 B2

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

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ARGUMENT..... 4

    A. Legal Standard for Rehearing ..... 4

    B. Legal Standard for Obviousness Where The Claimed Invention Falls Within The Prior Art Disclosed Range ..... 5

    C. The Proper Obviousness Standard Was Not Applied. .... 6

    D. The Board Routinely Applies an Obviousness Presumption When The Prior Art Range Encompasses the Claimed Amount ..... 9

    E. The Presumption of Obviousness was Not Overcome..... 12

III. CONCLUSION ..... 13

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page(s)</b>
<i>Ex Parte Berlin</i> No. 2011-009313, 2013 WL 3339398 (PTAB May 31, 2013) .....	9, 10
<i>Ex Parte Fehr</i> No. 2013-006774, 2015 WL 4349960 (PTAB July 14, 2015) .....	11
<i>Ex Parte Reinsinger</i> , No. 2009-013204, 2012 WL 991653 (PTAB Mar. 22, 2012) .....	11
<i>Ex Parte Saini</i> , No. 2009-004238, 2013 WL 3805052 (PTAB June 23, 2013) .....	8
<i>Ex Parte Saitou</i> No. 2010-003525, 2011 WL 2174633 (PTAB May 31, 2011) .....	10
<i>Galderma Labs., L.P. v. Tolmar, Inc.</i> , 737 F.3d 731 (Fed. Cir. 2013).....	passim
<i>In re Baird</i> , 16 F.3d 380 (Fed. Cir. 1994).....	8
<i>In re Geisler</i> , 116 F.3d 1465 (Fed. Cir. 1997).....	5, 7, 9, 12
<i>In re Jones</i> , 958 F.2d 347 (Fed. Cir. 1992).....	8
<i>In re Malagari</i> , 499 F.2d 1297 (CCPA 1974) .....	5, 9
<i>In re Peterson</i> , 315 F.3d 1325 (Fed. Cir. 2003).....	5, 6, 9
<i>In re Woodruff</i> , 919 F.2d 1575 (Fed. Cir. 1990).....	12

*Merck Sharp & Dohme B.V. v. Warner Chilcott Co., LLC*,  
No. 13-cv-2088, 2016 WL 4497054 (D. Del. Aug. 26, 2016) ..... 11

*Ormco Corp. v. Align Tech., Inc.*,  
463 F.3d 1299 (Fed. Cir. 2006)..... 6, 9

*Samsung Elecs. Co. Ltd. v. Home Semiconductor Corp.*,  
No. IPR2015–00467, 2016 WL 3228146 (PTAB June 13, 2016)..... 6

*Star Fruits S.N.C. v. United States*,  
393 F.3d 1277 (Fed. Cir. 2005)..... 5

*Warner Chilcott Co., LLC v. Teva Pharm. USA, Inc.*,  
89 F. Supp. 3d 641, 654, 673–74 (D.N.J. 2015) *aff'd*, 642 F. App'x 996  
(Fed. Cir. 2016)..... 4, 5, 11

**REGULATIONS**

37 C.F.R. § 42.71 ..... 4

Petitioner Mylan Pharmaceuticals Inc. respectfully requests rehearing of the Board's February 3, 2017 decision denying *inter partes* review of claims 1–22 (collectively the “Challenged Claims”) of U.S. Patent No. 9,173,859 (the “’859 patent”) as obvious based on Petitioner's Ground 3.<sup>1</sup> (Paper 15 at 2). Rehearing is warranted because the Board's decision was based on an incorrect legal standard for obviousness.<sup>2</sup>

## I. INTRODUCTION

Under Federal Circuit precedent, the Challenged Claims are presumed obvious because the claimed linagliptin dosages (2.5 mg and 5.0 mg) 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.”). For at least this

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<sup>1</sup> The Board denied *inter partes* review of claims 1–22 as obvious over the '510 Publication (Ex. 1003) and Glucophage Label (Ex. 1004) (Ground 1) and of claims 14 and 20 as anticipated by the '510 Publication (Ground 2). (Paper 15 at 9, 13). Petitioner does not seek rehearing of the Board's decision on Grounds 1 and 2.

<sup>2</sup> On February 17, 2017 Petitioner requested rehearing in IPR2016-01563 (the “Companion IPR”) concerning the '859 patent's parent, U.S. Patent No. 8,673,927. The '927 and '859 patents share the same specification and each claims methods of administering specified dosages and/or dosage ranges of linagliptin and metformin.

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