

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMPLEX INNOVATIONS, LLC,
Petitioner,

v.

ASTRAZENECA AB,
Patent Owner.

IPR2017-00631

Patent 7,759,328 B2

PATENT OWNER PRELIMINARY RESPONSE

TABLE OF CONTENTS

I. INTRODUCTION 1

II. LEVEL OF SKILL AND CLAIM CONSTRUCTION 1

 A. Person of Ordinary Skill in the Art 1

 B. Claim Construction..... 1

III. EACH GROUND HAS FATAL GAPS IN EVIDENCE..... 2

 A. Anticipation by Mistry 2

 1. Petitioner’s anticipation case requires picking every ingredient and every concentration from generic disclosures 2

 2. Mistry does not disclose 0.09 mg/mL formoterol fumarate dihydrate 8

 B. Anticipation by Rogueda..... 17

 1. Petitioner fails to justify cobbling together different embodiments from Rogueda to meet the claims..... 18

 2. Rogueda does not disclose 0.09 mg/mL formoterol fumarate dihydrate 19

 C. Obviousness over Mistry, Rogueda, and Carling 27

 D. Obviousness of claims 2 and 3 over Mistry, Rogueda, Meade, and Lewis..... 29

IV. CONCLUSION..... 30

PATENT OWNER'S LIST OF EXHIBITS

Exhibit No.	Description
2001	D.R. Defibaugh and M.R. Moldover, "Compressed and Saturated Liquid Densities for 18 Halogenated Organic Compounds." <i>J. Chem. Eng. Data</i> 42, 160–168 (1997).
2002	X-J Liu et al., "Liquid Viscosity of 1,1,1,2,3,3,3-Heptafluoropropane (HFC-227ea) along the Saturation Line." <i>J. Chem. Eng. Data</i> 44, 688–692 (1999).
2003	M. Dolovich, "New delivery systems and propellants." <i>Can. Respir. J.</i> 6, 290–295 (1999).
2004	US Pat. No. 6,475,467, iss. Nov. 5, 2002.
2005	WO Pub. No. 00/07567, pub. Feb. 17, 2000.
2006	US Pat. No. 3,283,012, iss. Nov. 1, 1966.
2007	A.L. Henne and M.A. Snook, "Fluorinated Ethers." <i>J. Am. Chem. Soc.</i> 72, 4378–4380 (1950).
2008	US Pat. No. 3,965,148, iss. Jun. 22, 1976.
2009	US Pat. No. 5,874,469, iss. Feb. 23, 1999.
2010	US Pub. No. 2011/0207893, pub. Aug. 25, 2011.
2011	US Pub. No. 2016/0310641, pub. Oct. 27, 2016.

I. INTRODUCTION

The Petition should be denied because each challenge depends on erroneous and unsupported factual assumptions as detailed below. Petitioner's key assertion—that a canister containing 10–19 mL of HFA227, in which small amounts of other ingredients are mixed, would have a fill weight of 6–10 grams—is plainly erroneous. HFA227 has a liquid density at room temperature of about 1.4 g/mL, making Petitioner's assertion a physical impossibility. Several other defects further taint the Petition, as discussed herein.

II. LEVEL OF SKILL AND CLAIM CONSTRUCTION

A. Person of Ordinary Skill in the Art

Patent Owner does not acquiesce in Petitioner's characterization of the level of skill possessed by one of ordinary skill in the art (Pet. 25), but takes the position that this issue does not require resolution at this stage of the proceeding.

B. Claim Construction

Patent Owner agrees with Petitioner (at Pet. 26), though solely for purposes of this preliminary response, that no claim terms require express construction.

III. EACH GROUND HAS FATAL GAPS IN EVIDENCE

A. Anticipation by Mistry

Petitioner has failed to show a reasonable likelihood that Mistry anticipates claims 1 and 4–15 because (1) Petitioner’s argument requires picking and choosing every recited ingredient and every recited concentration from various generic disclosures; and (2) Petitioner’s elaborate calculations to show that Mistry discloses the recited formoterol fumarate dihydrate (“FFD”) concentration are both unsupported by evidence and erroneous.

1. Petitioner’s anticipation case requires picking every ingredient and every concentration from generic disclosures

Petitioner cannot point to a single embodiment in Mistry that discloses all five recited ingredients and the recited concentrations. In fact, there isn’t even a single embodiment containing more than *two* of the recited ingredients, let alone the concentrations. Petitioner’s argument thus requires one of ordinary skill to have made a protracted series of arbitrary selections of ingredients and concentrations to reach the claimed formulation.

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