

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC
Petitioners,

v.

ALCON RESEARCH, LTD.,
Patent Owner

Case: IPR2017-01053
U.S. Patent No. 8,268,299

**DECLARATION OF JOHN C. STAINES, JR. IN SUPPORT OF
PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE**

MAY 1, 2018

Exhibit 1094
ARGENTUM
IPR2017-01053

Table of Contents

I.	QUALIFICATIONS.....	3
II.	OBJECTIVES.....	4
III.	SUMMARY OF FINDINGS.....	6
IV.	PRODUCT BACKGROUND.....	11
V.	COMMERCIAL SUCCESS ANALYSIS.....	17
	A. Dr. Grabowski’s Analysis Does Not Consider Other Patents That Would Have Blocked an Alternative Developer of the ’299 Patent	21
	B. Dr. Grabowski’s Analysis Fails to Consider the Economic Significance of Travatan Z[®]’s “Successor Product” Status.....	22
	1. Economics of Successor Products in the Pharmaceutical Industry.....	24
	2. Alcon’s Marketing of Travatan Z [®] Comports with the Model of a Successor Product Developed to Shift Sales Away from Generic Competition	29
	3. Implications of Travatan Z [®] Successor Product Status for Dr. Grabowski’s Commercial Success Analysis	33
	C. Dr. Grabowski’s Analyses Based on Travatan Z[®]’s Wholesale Dollar Sales Rather Than Net Revenues Lead to Unreliable Conclusions.....	45
	D. The Sales Impact of Generic Competition for Other PGA Brands is Not Relevant to Assessing if Travatan Z[®] is a Commercial Success	54
VI.	NEXUS ANALYSIS	60
	A. Travatan Z[®]’s Commercial Performance Has Primarily Been Driven by Original Travatan[®]’s Previous Performance.....	61
	B. Dr. Grabowski Inappropriately Dismisses Marketing Support as an Independent Driver of Travatan Z[®]’s Commercial Performance.....	62
	C. Lack of Evidence that the ’299 Patent Technology was a Significant Driver of Travatan Z[®]’s Sales.....	67

I. QUALIFICATIONS

1. I am a Director and Principal in the Washington, DC office of Navigant Economics, a subsidiary of Navigant Consulting, Inc., an international consulting firm. Navigant Economics provides expertise primarily in economics, finance, public policy, and business strategy. I am knowledgeable in the fields of microeconomics, industrial organization, financial economics, and statistics, and have particular expertise in applying the tools of these disciplines to legal disputes arising in the pharmaceutical and related industries.

2. My educational background includes a B.A. in Economics and M.P.M. in Public Policy from the University of Maryland and an M.B.A. in Business Economics and Finance from the University of Chicago. Since 1984, I have worked as a consultant on economic, financial, statistical, and general business issues arising in commercial litigation disputes. My work primarily has involved analyzing competitive issues and estimating commercial damages associated with various types of legal and regulatory matters, most often relating to the pharmaceutical industry. I previously have been accepted as an expert witness in Federal Court and before the Patent Trial and Appeal Board to opine on economic

issues arising in pharmaceutical-related patent and antitrust litigation. A copy of my curriculum vitae is included as Appendix A to this report.

3. Navigant Economics is being compensated for the work I perform in connection with this case at my standard hourly rate of \$535. Part of the work underlying this report was performed by staff of Navigant Economics working under my direction. Payment of fees to Navigant Economics associated with work performed on this matter is not contingent upon or in any way affected by the nature of my opinions or the outcome of this litigation.

II. OBJECTIVES

4. I have been retained by the Petitioners in this matter, Argentum Pharmaceuticals LLC (“Argentum”) to render independent expert opinions concerning evidence presented by Patent Owner, Alcon Research, Ltd. (“Alcon”), regarding the existence and sources of any commercial success that may be associated with the glaucoma treatment, Travatan Z[®], as they may relate to the obviousness of the technology claimed by U.S. Patent Number 8,268,299 (the “’299 patent”), entitled “Self-Preserved Aqueous Pharmaceutical Compounds,”¹ Patent Owner markets Travatan

¹ Exhibit 1001.

Z[®] in the United States,² which it claims to be the “commercial embodiment of the invention claimed in the ’299 patent.”³ On March 10, 2017, Argentum petitioned the Patent Trial and Appeal Board (“PTAB”) to institute an *inter partes* review of the validity of claims 1 to 28 of the ’299 patent,⁴ which the PTAB did institute on September 22, 2017.⁵

² Exhibit 2061, p. 53.

³ Argentum Pharmaceuticals LLC v. Alcon Research Ltd., U.S. Patent and Trademark Office, Patent Trial and Appeals Board, IPR2017-01053, Patent Owner Response Alcon Research, Ltd.’s Response, December 22, 2017, p. 54.

⁴ Argentum Pharmaceuticals LLC v. Alcon Research Ltd., U.S. Patent and Trademark Office, Patent Trial and Appeals Board, IPR2017-01053, Petition for *Inter Partes* Review, March 10, 2017, pp. 1-2.

⁵ Argentum Pharmaceuticals LLC v. Alcon Research Ltd., U.S. Patent and Trademark Office, Patent Trial and Appeals Board, IPR2017-01053, Decision, Institution of *Inter Parties* Review, September 22, 2017, pp. 17-18.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.