

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC

Petitioner

v.

ALCON RESEARCH, LTD.

Patent Owner

Patent No. 8,268,299

Issue Date: September 18, 2012

Title: SELF PRESERVED AQUEOUS PHARMACEUTICAL COMPOSITIONS

Inter Partes Review No. IPR2017-01053

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

The claimed formulations contain no novel ingredients, no concentration ranges not found in the ophthalmic prior art, nor do the ingredients perform any function not already recognized in the art. Both zinc and borate-polyol complexes were known to provide preservative efficacy (“PE”), while enhancing the activity of other included antimicrobial agents. Also known were the potentially deleterious effects of anionic species, as well as the stability-enhancing effect of pH in travoprost formulations. By 2006, a POSA was well-motivated to improve a host of ophthalmic products to avoid BAK, including the well-known travoprost formulation Travatan[®], via inclusion of zinc and borate-polyol complexes to achieve PE, and would have arrived at the claims of the ’299 Patent via routine optimization, but-for Alcon’s blocking patents.

Alcon counters with a pedantic POSA focusing solely on most-preferred embodiments and select working examples, to the exclusion of broader art teachings and relevant understandings. However, a POSA is a person of ordinary creativity, and it is not hindsight to optimize using known result-effective-variables. Alcon also alleges “unknown solutions” to “unexpected discoveries” that were in fact recognized and understood long before the priority date. None of Alcon’s arguments nor proffered secondary considerations withstand scrutiny, as discussed in detail herein.

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