

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 RESPONSE TO ALCON RESEARCH, LTD.'S MOTION
FOR OBSERVATIONS ON THE DEPOSITION OF PETITIONER'S
EXPERT JOHN C. STAINES, JR.**

Petitioner Argentum Pharmaceuticals LLC (“Petitioner”) hereby responds to Alcon Research Ltd.’s (“Alcon”) motion for observations on the deposition of Petitioner’s expert John C. Staines, Jr. (Paper 45, hereafter “Mot.”). Office Patent Trial Practice Guide, 77 Fed. Reg. 48756 at 48767-68 (August 14, 2012).

Observation #1: Alcon’s assertion that Mr. Staines’ understanding of the ’299 patent undermines his opinions regarding Travatan Z’s sales as a successor product misapprehends the record. Mr. Staines responded to Dr. Grabowski’s analysis which focused on Travatan Z’s alleged commercial success. As Mr. Staines testified, he did not consider use of the ’299 patent for other products because he was unaware of such uses. EX2168, 87:1-6.

Observation #2: Alcon’s assertions misapprehend Mr. Staines’ deposition testimony relative to his declaration and his deposition testimony. Mr. Staines’ declaration states in full “While extrapolations of past trends are subject to uncertainty, *the 2001 to 2006 sales trend observed for Travatan® in this case is sufficiently compelling* to conclude that Travatan®’s 2007 to 2010 (and 2011) sales absent Travatan Z® would have been much closer to the actual Travatan®/Travatan Z® sales than to Dr. Grabowski’s untenable no-growth assumption, which implies that Travatan Z® generated far more Travatan® cannibalization, and far fewer incremental sales than Dr. Grabowski’s analysis implies.” EX1094, ¶42. Mr. Staines also testified that with respect to the linear

extrapolation for the Travatan franchise sales from 2006 to 2011 that “As I said, the predictions are never 100 percent accurate, but it's really close to -- very close to what the actual sales were for those and a lot closer than Dr. Grabowski's assumption, a lot closer than Dr. Grabowski's assumption.” EX2168, 91:12-17. He also explained that “to ignore that right up until Travatan Z came on the market that there was no abating in the increase, Dr. Grabowski's analysis can't be relied on.” EX2168, 94:14-16. Additionally, to further support his analysis based on the “sufficiently compelling” five and one-half years sales trend of Travatan alone from 2001 to 2006, Mr. Staines offered an alternative log extrapolation. *See* EX1094, Ex. C (dashed blue line).

Observation #3: Alcon’s assertion that Mr. Staines’ deposition testimony contradicts Petitioner’s argument is misplaced. Petitioner’s reply references Mr. Staines’ declaration at paragraphs 46-55 (Paper 35 at 27), which do not rely on calculation errors to support their conclusion. *See, e.g.*, EX1094, ¶48 (discussing Dr. Grabowski’s use of wholesale sales not taking into account non-invoice sales allowances); ¶50 (failure to provide net sales revenues); ¶47 (contrasting dollar sales for Travatan Z with unit sales); ¶ 52 (strong suggestion that “Alcon has provided significant rebates to insurers”).

Dated: May 25, 2018

Respectfully submitted,

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing
**PETITIONER'S RESPONSE TO ALCON RESEARCH, LTD.'S MOTION
FOR OBSERVATIONS ON THE DEPOSITION OF PETITIONER'S
EXPERT JOHN C. STAINES, JR.** was served on May 25, 2018, on Counsel for
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