Case IPR2017-01053 Patent 8,268,299

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC, Petitioner

v.

ALCON RESEARCH, LTD., Patent Owner

> Case IPR2017-01053 Patent 8,268,299

DECLARATION OF SOUMYAJIT MAJUMDAR, Ph.D.

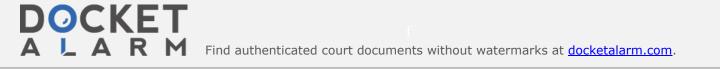


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		2. The POSA would not have been motivated to reduce the concentration of zinc below the levels disclosed in Xia's Examples to the levels claimed in the '299 patent
		3. Even if the POSA were to decrease the concentration of zinc below 0.48 mM, the POSA would have included a conventional preservative in the solution
		4. Even if the POSA were to decrease the concentration of zinc below that in Xia's Example 18, the POSA would

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I, Soumyajit Majumdar, Ph.D., hereby declare as follows:

I. INTRODUCTION

1. I am over the age of eighteen, and am otherwise competent to make this declaration.

2. I have been informed by counsel for Alcon Research, Ltd. ("Alcon") that the Patent Trial and Appeal Board has granted the petition of Argentum Pharmaceuticals LLC ("Argentum") to institute this Inter Partes Review ("IPR") regarding the purported obviousness of claims 1–28 of U.S. Patent No. 8,268,299 (the "299 patent"). I understand from counsel that the following are the four grounds of obviousness at issue:

Ground 1: Obviousness of claims 1, 2, 4–8, 16, 17, and 20 over World Intellectual Property Organization International Patent Application Number 2005/097067 A1 ("Xia"), Ex. 1003, United States Patent No. 6,011,062 ("Schneider"), Ex. 1007, and United States Patent No. 6,143,799 ("Chowhan"), Ex. 1004;

Ground 2: Obviousness of claim 28 over Xia, Schneider, Chowhan, and the FDA Approved Drug Label for "TRAVATAN[®] (travoprost ophthalmic solution) 0.004% sterile" ("TRAVATAN[®] Label"), Ex. 1006;

Ground 3: Obviousness of claims 1–23, 25, and 26 over Xia, Schneider, Chowhan, and Gadd *et al.*, "Microorganisms and Heavy Metal Toxicity," *Microbial Ecology*, 4:303–317 (1978) ("Gadd"), Ex. 1005;

Ground 4: Obviousness of claims 24, 27, and 28 over Xia, Schneider, Chowhan, Gadd, and the TRAVATAN[®] Label.

3. I have been retained as an expert witness to opine as to various aspects of the compositions claimed in the '299 patent, including whether those compositions would have been obvious from the perspective of one of ordinary skill in the art ("POSA") as of the priority date, which I have been asked to assume by counsel to be September 21, 2006 ("priority date").

4. I have been informed by counsel for Alcon that an obviousness analysis involves a review of the scope and content of the prior art, the differences between the prior art and the claims at issue, the level of ordinary skill in the pertinent art, and "objective indicia of non-obviousness," such as long-felt need and commercial success. In particular, I have been advised that, for an invention to be regarded as "obvious," the POSA must have had a reason to modify the prior art or to combine one or more prior art references in a manner that would yield the claimed invention. I have also been informed that, for a claim to be obvious, the POSA must have a reasonable expectation of success with respect to the claimed

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