

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WATSON LABORATORIES, INC.,
Petitioner,

v.

UNITED THERAPEUTICS, INC.,
Patent Owner.

Case No. IPR2017-01621
Patent No. 9,358,240

PETITIONER'S REQUEST FOR REHEARING UNDER 37 C.F.R. § 42.71

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450
Submitted Electronically via the Patent Review Processing System

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. LEGAL STANDARDS	2
III. ARGUMENT.....	2
A. The Board Erroneously Rejected Dr. Donovan’s Use of 2-3 Seconds Per Breath In Her Calculations.	5
1. The Board improperly resolved a genuine issue of material fact against Petitioner.....	5
2. Even if patients with lung disease have a shorter inhalation time, the method disclosed in the prior art would have produced a dose in the claimed range.	10
B. The Board Legally Erred By Failing to Recognize that Overlapping Ranges Render the Claimed Dosage Range Prima Facie Obvious.....	11
IV. CONCLUSION.....	13

TABLE OF AUTHORITIES

Page(s)

Cases

Aker Biomarine v. Neptune Techs. & Bioresources, Inc.,
IPR2014-00003, Paper 45 (PTAB May 16, 2014)2

In re Applied Materials, Inc.,
692 F.3d 1289 (Fed. Cir. 2012) 12

*Commissariat a l’Energie Atomique et aux Energies Alternatives v.
Silicon Genesis Corp.*,
IPR2016-00831, Paper 14 (PTAB Sep. 28, 2016)..... 1, 4

In re Geisler,
116 F.3d 1465 (Fed. Cir. 1997) 11

General Elec. Co. v. United Techs. Corp.,
IPR2016-01289, Paper 7 (PTAB Dec. 27, 2016) 1, 4

In re Harris,
409 F.3d 1339 (Fed. Cir. 2005) 1

Johns Manville Corp. v. Knauf Insulation, Inc.,
IPR2015-01402, Paper 18 (PTAB Oct. 21, 2015)..... 1

In re Peterson,
315 F.3d 1325 (Fed. Cir. 2003) 11

In re Wertheim,
541 F.2d 257, 191 USPQ 90 (CCPA 1976)..... 12

Other Authorities

37 C.F.R. § 42.51(b)(1)(iii).....8

37 C.F.R. § 42.71(c)..... 1, 2

37 C.F.R. § 42.71(d) 1

37 C.F.R. § 42.108(c).....*passim*

81 Fed. Reg. 18755	5
81 Fed. Reg. 18756	6, 7
MPEP § 2144.05(I)	12

PETITIONER'S EXHIBIT LIST

Exhibit	Description
1001	U.S. Patent No. 9,358,240
1002	Declaration of Maureen D. Donovan in Support of the Petition for Inter Partes Review of U.S. Patent No. 9,358,240
1003	Robert Voswinckel, et al. "Inhaled treprostinil sodium for the treatment of pulmonary hypertension" Abstract #1414, <i>Circulation</i> , 110, 17, Supplement (Oct. 2004): III-295 ("Voswinckel")
1004	U.S. Patent Application Publication No. 2004/0265238 A1 to Chaudry ("Chaudry")
1005	Hossein Ardeschi Ghofrani, Robert Voswinckel, et al., "Neue Therapieoptionen in der Behandlung der pulmonalerteriellen Hypertonie," <i>Hertz</i> , 30,4 (June 2005): 296-302 ("Ghofrani")
1006	Opti-Neb-ir® Operating Instructions, Model ON-100/2 (2005)
1007	RESERVED
1008	Venta-Neb-ir® A-I-C-I Operating Instructions, Model VN-100/4
1009	Annexes to Commission Decision C(2005)3436 of 05 September 2005, http://ec.europa.eu/health/documents/community-register/2005/2005090510259/anx_10259_en.pdf (Annex III – Ventavis® Labelling and Package Leaflet)
1010	U.S. Patent No. 6,606,989 ("Brand '989")
1011	Amendment and Reply Accompanying RCE filed in 12/591,200 (Jul. 2, 2013) (with accompanying Declaration of Lewis Rubin, M.D.)
1012	WO 93/00951 to Patton
1013	Declaration of Scott Bennett, Ph.D.
1014	Affidavit of Christopher Butler, June 15, 2017
1015	Affidavit of Christopher Butler, June 16, 2017
1016	RESERVED
1017	RESERVED
1018	U.S. Patent No. 6,521,212 ("Cloutier '212")
1019	U.S. Patent No. 4,306,075 ("Aristoff '075")
1020	U.S. Patent No. 5,190,972 ("Dumble '972")
1021	European Patent Specification 0347243 B1, published January 13, 1993
1022	U.S. Patent No. 6,261,539 ("Adjei '539")
1023	European Patent Application Publication No. EP 0372777 A2 ("Purewal EP '777")
1024	U.S. Patent No. 4,895,719 ("Radhakrishnan '719")

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.