

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 RESPONSE TO PATENT OWNER'S REQUEST FOR
REHEARING UNDER 37 C.F.R. § 42.71**

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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

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MPEP § 2132.011

I. INTRODUCTION

In instituting trial on Ground 1, the Board determined that “Petitioner ha[d] provided a sufficient basis on which to conclude that Ghofrani was the work of another.” Inst. Dec., 14. The Board’s decision was correct. Nevertheless, Patent Owner alleges that the Board erred in its “erroneous interpretation of the law” and in its allegedly improper “weighing the facts of record.” Reh’g Req., 2-3. Patent Owner misapprehends the Board’s discussion of controlling law and rules. And a disagreement over how evidence was weighed is no grounds for rehearing. Institution was proper and rehearing should be denied.

II. ARGUMENT

A. Background

Ghofrani is a June 2005 journal article that discusses, among other things, a clinical trial in Giesen, Germany in which inhaled treprostinil was administered to patients with pulmonary hypertension. Ex. 1005. Ghofrani lists five authors, two of whom are identified as inventors of the challenged patent (Seeger and Voswinckel) and three who are not listed as inventors (Ghofrani, Reichenberger and Grimminger). In addition to Seeger and Voswinckel, the challenged patent lists five additional inventors who are not included as authors of Ghofrani. Petitioner therefore made out a *prima facie* case that Ghofrani is prior art because its “authorship differs . . . from the inventive entity” of the challenged claims. MPEP

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