

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WATSON LABORATORIES, INC.

Petitioner

v.

UNITED THERAPEUTICS CORP.

Patent Owner

Patent No. 9,339,507

Issue Date: July 13, 2017

Title: TREPROSTINIL ADMINISTRATION BY INHALATION

Inter Partes Review No. 2017-01622

**PATENT OWNER REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. LEGAL STANDARD 1

III. ARGUMENT 2

A. The Board Misapprehended Controlling Precedent By Requiring More Evidence Than Necessary To Prove Ghofrani Is Not By “Another” 3

B. The Board Erred In Finding Voswinckel’s Authorship Created A Genuine Issue Of Material Fact Regarding Whether Ghofrani Constitutes the Work of Another. 9

IV. CONCLUSION 11

TABLE OF AUTHORITIES**Cases**

<i>Applied Materials Inc. v. Gemini Research Corp.</i> , 835 F.2d 279 (Fed. Cir. 1987)	5
<i>Biotec Biologische Naturverpackungen v. Biocorp., Inc.</i> , 249 F.3d 1341 (Fed. Cir. 2011)	10
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	10
<i>Ethicon Inc. v. U.S. Surgical Corp.</i> , 135 F.3d 1456 (Fed. Cir. 1998)	8
<i>In re Katz</i> , 687 F.2d 450 (CCPA 1982).....	4, 5, 7, 8, 9, 10
<i>In re Land</i> , 368 F.2d 866 (CCPA 1966).....	3, 4, 6, 7
<i>Palo Alto Networks, Inc. v. Juniper Networks, Inc.</i> , IPR2013-00369 (PTAB Feb. 14, 2014).....	2
<i>Star Fruits S.N.C. v. United States</i> , 393 F.3d 1277 (Fed. Cir. 2005)	2
<i>Varian Med. Sys. v. Wm. Beaumont Hosp.</i> , IPR2016-00163 (PTAB May 4, 2017).....	5, 7, 8

Statutes

35 U.S.C. § 102(a)	3, 4
35 U.S.C. § 103	4, 8
35 U.S.C. § 103(a)	11
35 U.S.C. § 116(a)	7
35 U.S.C. § 315(b)	1

Other Authorities

MPEP § 2132.01 4, 6, 7

Regulations

37 C.F.R. § 42.108(c)..... 3, 10, 11

37 C.F.R. § 42.71(c).....2

37 C.F.R. § 42.71(d)1, 2

I. INTRODUCTION

United Therapeutics Corporation (“Patent Owner”) respectfully requests under 37 C.F.R. § 42.71(c) and (d) that the Patent Trial and Appeal Board (“Board”) reconsider one aspect of its Decision Instituting *Inter Partes* Review of U.S. Patent No. 9,339,507 (“the ’507 patent”), entered Jan. 11, 2018 (Paper 9, hereinafter “Decision”). The Decision instituted trial as to whether claims 1–9 of the ’507 patent would have been obvious over Voswinckel, Chaudry, Patton, and Ghofrani. In instituting trial, the Board concluded “that Petitioner has provided a sufficient basis on which to conclude that Ghofrani was the work of another.” Decision, p. 15. The Board misapprehended the legal standard in reaching this conclusion, and Petitioner failed to establish Ghofrani as prior art under the appropriate standard.¹

II. LEGAL STANDARD

A party may request rehearing of a Board institution decision. 37 C.F.R. § 42.71(d). “The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was

¹ Patent Owner disagrees with other parts of the decision and does not waive or forfeit its right to contest those issues in its Response or on appeal, specifically including the determination under 35 U.S.C. § 315(b), if relief is not granted on this request.

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.