

**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. IPR2017-01622  
Patent No. 9,358,507

---

**PETITIONER'S RESPONSE TO PATENT OWNER'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. ARGUMENT.....	1
A. Background .....	1
B. The Contribution of the Non-Inventor Authors to Ghofrani Raised a Genuine Issue of Material Fact That Cannot Be Resolved Pre-Institution. ....	2
C. The Ambiguity as to Inventorship of the Challenged Claims Raised a Genuine Issue of Material Fact That Cannot be Resolved Pre-Institution. ....	6
III. CONCLUSION.....	10

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Cognex Corp. v. Microscan Sys., Inc.*,  
No. 13 CIV. 2027 JSR, 2013 WL 5550092 (S.D.N.Y. Sept. 30,  
2013) .....9

*Emerachem Holdings, LLC v. Volkswagen Group of Am.*,  
859 F.3d 1341 (Fed. Cir. 2017) .....4, 5

*Ethicon Endo-Surgery, Inc. v. Hologic, Inc.*,  
689 F. Supp. 2d 929 (S.D. Ohio 2010) .....7

*In re Fong*,  
378 F.2d 977 (CCPA 1967) .....7

*Ex parte Kroger*,  
219 USPQ 370, 1982 WL 50447 (Pat. Bd. App. 1982) .....5

*In re Land*,  
368 F.2d 866 (CCPA 1966) .....8

*Nelson Prods., Inc. v. Bal Seal Eng’g, Inc.*  
IPR2014-573, Paper 9 (Sep. 2014) .....10

*Riverwood Int’l Corp. v. R.A. Jones & Co., Inc.*,  
324 F.3d 1346 (Fed. Cir. 2003) .....7

*Sprint Communications Company L.P. v. Comcast IP Holdings, LLC*,  
2015 WL 452289 (D. Del. 2015).....9

*Varian Med. Sys. v. Wm. Beaumont Hosp.*,  
IPR2016-163, Paper 79 (PTAB May 4, 2017) .....9, 10

*Viskase Corp. v. American Nat. Can Co.*,  
261 F.3d 1316 (Fed. Cir. 2001) .....8

**Other Authorities**

37 C.F.R. § 42.108(c).....3

Amendments to the Rules of Practice for Trials Before the Patent  
Trial and Appeal Board, 81 Fed. Reg. 18750 (April 1, 2016).....3

MPEP § 2132.01 .....1

## 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., 15. 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

# 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.