

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AUROBINDO PHARMA USA, INC.
Petitioner,

v.

ANRX CORPORATION,
ANRX LABORATORIES, INC.
ANRX LABORATORIES (NJ), INC.
ANRX EU LTD.
ANRX PHARMACEUTICALS, LLC,
TEVA PHARMACEUTICAL INDUSTRIES LTD.
Patent Owner(s).

Case IPR2017-01648
Patent 6,866,866 B1

Before SUSAN L.C. MITCHELL, TINA E. HULSE, and
DEVON ZASTROW NEWMAN, *Administrative Patent Judges*.

NEWMAN, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding
37 C.F.R. § 42.5

On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on fewer than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, No. 16-969, 2018 WL 1914661, at *10 (U.S. Apr. 24, 2018). In our Decision on Institution, we determined that Petitioner demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of the '866 patent is unpatentable. Paper 12, 15–22. We modify our institution decision to institute on all of the challenged claims and all of the grounds presented in the Petition.

The parties shall confer to discuss the impact, if any, of this Order on the current schedule. If, after conferring, the parties wish to otherwise change the schedule or submit further briefing, the parties must, within one week of the date of this Order, request a conference call with the panel to seek authorization for such changes or briefing. If the parties do not request such a call, the parties waive any request for additional briefing on the newly instituted claims and grounds.

As an alternative, the Board authorizes the parties to file, within one week of the date of this Order, a Joint Motion to Limit the Petition by removing the claims and grounds upon which we did not institute in our institution decision. *See, e.g., Apotex Inc. v. OSI Pharms, Inc.*, Case IPR2016-01284 (PTAB Apr. 3, 2017) (Paper 19) (granting, after institution, a joint motion to limit the petition by removing a patent claim that was included for trial in the institution decision).

In consideration of the foregoing, it is hereby:

ORDERED that our institution decision is modified to include review of all challenged claims and all grounds presented in the Petition;

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FURTHER ORDERED that, Petitioner and Patent Owner shall confer to determine whether they desire any changes to the schedule or any further briefing, and, if so, shall request a conference call with the panel to seek authorization for such changes or briefing within one week of the date of this Order.

FURTHER ORDERED that the parties are authorized to file, within one week of the date of this Order, a Joint Motion to Limit the Petition by removing any claims and/or grounds presented in the Petition that we did not institute upon in our Decision on Institution

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