

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FLATWING PHARMACEUTICALS, LLC and MYLAN  
PHARMACEUTICALS, INC.,  
Petitioners,

v.

ANACOR PHARMACEUTICALS, INC.,  
Patent Owner.

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Case IPR2018-00168 (Patent 9,549,938 B2)  
Case IPR2018-00169 (Patent 9,566,289 B2)  
Case IPR2018-00170 (Patent 9,566,290 B2)  
Case IPR2018-00171 (Patent 9,572,823 B2)<sup>1</sup>

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Record of Oral Hearing  
Held: March 1, 2019

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Before GRACE KARAFFA OBERMANN, TINA E. HULSE, and  
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

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<sup>1</sup> Cases IPR2018-01358, -1359, -1360, and -1361 have been joined with  
Cases IPR2018-00168, -169, -170, and -171, respectively.

Case IPR2018-00168 (Patent 9,549,938 B2)  
Case IPR2018-00169 (Patent 9,566,289 B2)  
Case IPR2018-00170 (Patent 9,566,290 B2)  
Case IPR2018-00171 (Patent 9,572,823 B2)

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The above-entitled matter came on for hearing on Friday, March 1, 2019, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case IPR2018-00168 (Patent 9,549,938 B2)  
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PROCEEDINGS

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JUDGE OBERMANN: Please be seated. It's going to take us just a few minutes to wake up our computers.

JUDGE HULSE: Good morning, everyone. I'm Judge Hulse in California; and with you in Alexander is Judge Obermann; and in Denver is Judge Harlow. We are here for the final hearing in IPR2018-00168, -169, -170, and -171, to which IPR2018-01358, -1359, -1360, and -1361 have been joined.

Let's begin with appearances, starting with Petitioner FlatWing, please.

MR. SEGREST: Yes, Your Honor, Philip Segrest for the Petitioner, FlatWing. Also in the gallery is the counsel for the co-Petitioners, Mylan.

MR. PARMELEE: Steve Parmelee, Your Honor.

JUDGE HULSE: Would counsel for Mylan like to introduce himself?

MR. PARMELEE: Steve Parmelee. I'm from Wilson Sonsini for Mylan Pharmaceuticals, Inc.

JUDGE HULSE: Thank you; and for Patent Owner?

MR. MAURER: Good afternoon, Your Honors. Aaron Maurer for Patent Owner; and in court with me here today is my colleague Tony Sheh.

JUDGE HULSE: Thank you. Welcome everyone. As we stated in our hearing order, each party will have 45 minutes of time to present their arguments. We'll start with Petitioner and then hear Patent Owner's response; and then assuming that both parties reserve time, we'll hear Petitioner's rebuttal and Patent Owner's sur-rebuttal. Please remember that

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1 neither Judge Harlow nor I can see what's on the screen; so if you could  
2 please be very specific as to where in the slides you are referring -- what  
3 slide number, etc. We do have them electronically, so we can follow along  
4 from here.

5 Judge Obermann will be timing you. She's in the room with you; and  
6 so she'll let you know how much time you have left. Does anyone have any  
7 questions?

8 MR. SEGREST: Does the display here show the time left or is that --

9 JUDGE OBERMANN: You're going to see the lights. They'll go  
10 from green -- I think the yellow is going to be a two or three minute  
11 warning. I can let you know; and then red means you're out of time. I'm  
12 sorry we don't have the display -- but wait, maybe we will. I see the  
13 display's up there.

14 MR. SEGREST: There's one here. I just didn't know if it was  
15 working.

16 JUDGE OBERMANN: Yeah. You tell me how much time you want  
17 to reserve and I'll put it on the clock.

18 MR. SEGREST: 15 minutes.

19 JUDGE OBERMANN: Fifteen; so, you're going to have 30 minutes  
20 to start. Are you seeing that amount of time floating up there?

21 MR. SEGREST: Yes.

22 JUDGE OBERMANN: Okay. So, you'll have full warning. Let me  
23 just get it to 30; and I won't begin the clock until you begin speaking.

24 JUDGE HULSE: Okay. Are we all set then? Mr. Segrest, you may  
25 begin.

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1 MR. SEGREST: Thank you. May it please the Board, I'm going to  
2 start pursuant to the guides the Board gave us -- departing a bit from the  
3 slides -- I want to look first at this question of what's the scope of issues still  
4 in dispute, especially in light of the previous IPRs. I'd like to refer the board  
5 to Exhibit 1017. It's the decision in one of the three previous IPRs, page 50;  
6 and there's a paragraph there which I think explains where we're at in this  
7 case as well.

8 It reads that, further, for the same reason set forth above with respect  
9 to claim 6, we credit Dr. Murthy's testimony that "formulating  
10 pharmaceutical compositions was well known in the art of cosmetics and  
11 topical pharmaceuticals. And a number of non-toxic pharmaceutical  
12 acceptable solvents were known, including water and ethanol." And  
13 "formulating pharmaceutical compositions involve nothing more than  
14 routine experimentation based on well-known protocols." And that the '657  
15 Patent does not "describe any unexpected results attributable to the claimed  
16 pharmaceutical formulation of claim 9. Of course, we're looking a different  
17 patent now, but the same principle still applies -- formulating pharmaceutical  
18 compositions. It's still well known to those in the art. It still involves  
19 routine experimentation.

20 At this point, we're down to one claim limitation that we're looking at  
21 which is the 5 percent white weight of Tavaborole in the claims that are still  
22 asserted. Most of the claims have dropped out. That 5 percent white weight  
23 of Tavaborole doesn't have any unexpected results associated with it. There  
24 needs to be something special about it because the prior art showed ranges  
25 all around this. There's nothing special about 5 percent. There're no

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