

Paper 1, November 21, 2017

In the United States Patent and Trademark Office

Before the Patent Trial and Appeal Board

FLATWING PHARMACEUTICALS, LLC,
Petitioner,

v.

ANACOR PHARMACEUTICALS, INC.,
Patent Owner

U.S. Patent No. 9,572,823 to Baker *et al.*

Ser. No. 15/091,394, filed April 5, 2016

Issue Date: February 21, 2017

Title: BORON-CONTAINING SMALL MOLECULES

Inter Partes Review No. 2018-00171

**PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 9,572,823
UNDER 35 U.S.C. §§ 311–319 AND 37 C.F.R. §§ 42.100 *et. seq.***

TABLE OF CONTENTS

<u>TABLE OF CONTENTS</u>	i
<u>TABLE OF AUTHORITIES</u>	iv
<u>EXHIBIT LIST</u>	vi
<u>MANDATORY NOTICES</u>	X
1. Real Parties-In-Interest, § 42.8(b)(1).....	X
2. Related Matters, § 42.8(b)(2).	X
3. Lead and Back-Up Counsel, § 42.8(b)(3)	xi
4. Service Information, § 42.8(b)(4).....	xii
(i) <i>Electronic Mailing Address</i>	xii
(ii) <i>Postal Mailing Address</i>	xii
(iii) <i>Hand-Delivery Address</i>	xii
(iv) <i>Telephone number</i>	xii
(v) <i>Facsimile Number</i>	xii
<u>INTRODUCTION</u>	1
<u>GROUND FOR STANDING</u>	1
<u>BACKGROUND</u>	1
I. Scope And Content Of The Prior Art	1
A. <i>Boron-Containing Compounds In General.</i>	1
B. <i>Prior Art Patents And Printed Publications.</i>	4

1. <i>Austin</i>	4
2. <i>Brehove</i>	7
3. <i>Freeman</i>	13
4. <i>Samour</i>	18
II. Level of Ordinary Skill in the Art	21
III. The '823 Patent Prosecution History.....	21
<u>IDENTIFICATION OF THE CHALLENGE</u>	26
I. The Claims Challenged	27
II. Specific Grounds And Art.	28
III. Claim Construction.....	29
IV. How the claims are unpatentable.....	30
A. <i>Explanation Of Ground 1 For Unpatentability: Claims 1 & 4–6 of the '823 Patent are Obvious Over Austin in View of Brehove</i>	33
1. All Elements of Claims 1 & 4–6 are Obvious Over <i>Austin</i> in View of <i>Brehove</i>	33
2. A POSITA Would Have Had Reason to Combine <i>Austin</i> and <i>Brehove</i>	37
3. A POSITA Would Have Had a Reasonable Expectation of Success in Combining <i>Austin</i> and <i>Brehove</i>	40
B. <i>Explanation Of Ground 2 For Unpatentability: Claims 2 & 3 of the '823 Patent are Obvious Over Austin in View of Brehove and Samour</i>	45
1. All Elements of Claims 2 & 3 are Obvious Over <i>Austin</i> in View of <i>Brehove</i> and <i>Samour</i>	45
2. A POSITA Would Have Had Reason to Combine <i>Austin</i> ,	

	<i>Brehove</i> , and <i>Samour</i> and Would Have had a Reasonable Expectation of Success in Combining the Same	47
C.	<i>Explanation Of Ground 3 For Unpatentability: Claims 1 & 4–6 of the '823 Patent are Obvious Over Austin in View of Freeman</i>	50
1.	All Elements of Claims 1 & 4–6 are Obvious Over <i>Austin</i> in View of <i>Freeman</i>	50
2.	A POSITA Would Have Had Reason to Combine <i>Austin</i> and <i>Freeman</i>	54
3.	A POSITA Would Have Had a Reasonable Expectation of Success in Combining <i>Austin</i> and <i>Freeman</i>	57
D.	<i>Explanation Of Ground 4 For Unpatentability: Claims 2 & 3 of the '823 Patent are Obvious Over Austin in View of Freeman and Samour</i>	60
1.	All Elements of Claims 2 & 3 are Obvious Over <i>Austin</i> in View of <i>Freeman</i> and <i>Samour</i>	61
2.	A POSITA Would Have Had Reason to Combine <i>Austin</i> , <i>Freeman</i> , and <i>Samour</i> and Would Have had a Reasonable Expectation of Success in Combining the Same	63
E.	<i>No Secondary Considerations Overcome This Strong Showing of Obviousness.</i>	65
	<u>CONCLUSION</u>	66

TABLE OF AUTHORITIES

CASES

<i>Graham v. John Deere Co.</i> , 383 U.S. 1 (1966).....	31, 65
<i>Hoffmann-La Roche Inc. v. Apotex Inc.</i> , 748 F.3d 1326 (Fed. Cir. 2014)	31
<i>In re Baxter Travenol Labs.</i> , 952 F.2d 388 (Fed. Cir. 1991)	66
<i>In re Bigio</i> , 381 F.3d 1320 (Fed. Cir. 2004)	32
<i>In re Clay</i> , 966 F.2d 656 (Fed. Cir. 1992)	32
<i>In re Gershon</i> , 372 F.2d 535 (CCPA 1967)	66
<i>In re ICON Health & Fitness, Inc.</i> , 496 F.3d 1374 (Fed. Cir. 2007)	32
<i>In re Merck & Co.</i> , 800 F.2d 1091 (Fed. Cir. 1986)	33
<i>In re Piasecki</i> , 745 F.2d 1468 (Fed. Cir. 1984)	65
<i>Innovation Toys, LLC v. MGA Entm't, Inc.</i> , 637 F.3d 1314 (Fed. Cir. 2011)	32
<i>Kao Corp. v. Unilever United States, Inc.</i> , 441 F.3d 963 (Fed. Cir. 2006)	66
<i>KSR Int'l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	<i>passim</i>
<i>Newell Cos., Inc. v. Kenney Mfg. Co.</i> , 864 F.2d 757 (Fed. Cir. 1988)	65

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.