

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

MYLAN TECHNOLOGIES, INC.  
Petitioner,

v.

NOVEN PHARMACEUTICALS, INC.  
Patent Owner.

U.S. Patent No. 9,724,310

Title: TRANSDERMAL ESTROGEN DEVICE AND DELIVERY

---

*Inter Partes* Review No. IPR2018-00173

---

**PATENT OWNER OPPOSITION TO REQUEST FOR REHEARING**

**TABLE OF CONTENTS**

I. Introduction..... 1

II. Legal Standards ..... 2

III. Petitioner Impermissibly Introduces New Evidence Not of Record..... 4

IV. Petitioner Impermissibly Relies On New Arguments Not In The Petition ..... 5

    A. Petitioner’s New Arguments Regarding Mueller Figure 3  
    Should Not Be Considered..... 5

    B. Petitioner’s New Arguments Regarding Chien Figure 5 Should Not  
    Be Considered ..... 7

V. Petitioner’s Unsupported Assertions Regarding Chien Do Not Create  
A Genuine Issue Of Material Fact..... 8

VI. Petitioner Has Not Shown Any Abuse Of Discretion In The Board’s  
Treatment Of Mueller or Chien ..... 11

VII. Petitioner Attempts An Unauthorized Reply..... 13

VIII. Conclusion ..... 14

**TABLE OF AUTHORITIES**

**Cases**

*Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375  
(Fed. Cir. 2015) .....6, 9

*PPG Indus. Inc. v. Celanese Polymer Specialties Co. Inc.*, 840 F.2d 1565  
(Fed. Cir. 1988) .....2

*Rohm & Haas Co. v. Brotech Corp.*, 127 F.3d 1089 (Fed. Cir. 1997).....9

**Statutes**

35 U.S.C. § 314(a).....6, 9

**Rules and Regulations**

37 C.F.R. § 42.71 (d)..... 2, 6, 7

37 C.F.R. § 42.108(c).....10

37 C.F.R. § 42.61(c)..... 8, 10

37 C.F.R. § 42.65(a).....9

37 C.F.R. § 42.71(c).....2

Office Trial Practice Guide, 77 Fed. Reg. 48756 (Aug. 14, 2012)..... 3, 4, 9

**Inter Partes Reviews**

*Apple, Inc., v. Contentguard Holdings, Inc.*, IPR2015-00358, Paper 9  
(PTAB, July 2, 2015) .....8

*Captioncall, LLC v. Ultratec, Inc.*, IPR2014-00780, Paper 40  
(PTAB, May 19, 2016).....3, 7

*Int’l Bus. Machines Corp. v. Electronics and Telecomm. Research Inst.*,  
IPR2014-00976, Paper 16 (PTAB, Feb. 24, 2016) .....3

*MasterCard Int’l Inc. v. Grecia*, IPR2017-00793, Paper 7 (PTAB, July 3, 2017) ...8

IPR2018-00173  
Patent Owner Opposition to Request for Rehearing

<i>Nestlé Purina Petcare Co. v. Oil-Dri Corp. of Amer.</i> , IPR2015-00737, Paper 39 (PTAB, Feb. 9, 2017) .....	14
<i>Power Integrations, Inc. v. Semiconductor Components Indus, LLC</i> , IPR2017-01975, Paper 11 (PTAB, April 30, 2018) .....	2, 4, 5
<i>Sandoz, Inc. v. Abbvie Biotech. Ltd.</i> , IPR2017-01824, Paper 16 (PTAB, May 3, 2018) .....	17
<i>Subaru of Am., Inc. v. Blitzsafe Texas LLC</i> , IPR2018-00090, Paper 15 (PTAB, April 20, 2018) .....	12
<i>Telit Wireless Solutions Inc. v. M2M Solutions LLC</i> , IPR2016-00055, Paper 13 (PTAB, May 24, 2016) .....	9
<i>United Microelectronics Corp., v. Lone Star Silicon Innovations LLC.</i> , IPR2017-01513, Paper 10 (PTAB, May 22, 2018) .....	4, 6, 10
<i>Wright Med. Tech., Inc. v. Biomed. Enter., Inc.</i> , IPR2015-00786, Paper 40 (PTAB, May 26, 2016) .....	4, 16

**I. Introduction**

Patent Owner opposes the Request for Rehearing (“Request”) filed July 12, 2018, by Petitioner, Mylan Technologies, Inc., as improperly presenting new evidence, raising new arguments, and failing to establish that the Board abused its discretion in denying institution of *Inter Partes* Review. This Opposition was authorized in the Board’s July 16, 2018, email and is timely filed by July 23, 2018. For the reasons set forth herein, Petitioner’s Request should be denied.

Petitioner mischaracterizes the Decision Denying Institution (Paper 9; hereafter “Decision”) as resting on a few findings Petitioner disagrees with, and attempts to use the Request as a vehicle to introduce new evidence and raise new arguments. For example, Petitioner now argues that the deficiencies in Figure 3 of Mueller (EX1005) are “immaterial.” Request at 1, 6-11. Yet, the Petition did not even acknowledge the deficiencies existed, let alone present evidence and arguments that they somehow are “immaterial.” Nor did Petitioner seek permission to address the deficiencies of Mueller Figure 3 in a Reply. *Cf.* Request at 5. Even more egregious is Petitioner’s presentation of new purported evidence in the Request, including (i) a new marked-up version of Mueller Figure 3 (Request at 7), (ii) an image of what is alleged to be the corresponding figure of the German application from which Mueller claims priority (Request at 9), and (iii) Dr. Brain’s testimony submitted in later-filed IPR2018-01119 (Request at 8-9). Petitioner’s

# 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.