

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. 9,730,900

Title: TRANSDERMAL ESTROGEN DEVICE AND DELIVERY

Inter Partes Review No. IPR2018-00174

PATENT OWNER OPPOSITION TO REQUEST FOR REHEARING

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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 8; 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

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