

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMNEAL PHARMACEUTICALS LLC AND
AMNEAL PHARMACEUTICALS OF NEW YORK, LLC,
Petitioners,

v.

ALMIRALL, LLC,
Patent Owner.

Case IPR2018-00608
U.S. Patent No. 9,161,926 B2

PETITIONERS' REPLY TO PATENT OWNER'S RESPONSE

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 4

I. ALMIRALL’S LEGALLY IRRELEVANT ARGUMENTS. 4

 A. The existence of alternatives is not a “teaching away,” and does not negate obviousness of the claimed compositions.4

 B. There is no need to construe “dapsonе” because its meaning is not in dispute in this case.....8

II. ALMIRALL HAS NOT REBUTTED AMNEAL’S *PRIMA FACIE* OBVIOUSNESS CASE.10

 A. The Sepineo® disclosures in Nadau-Fourcade (Ground 1) and Bonacucina (Ground 2) meet the “polymeric viscosity builder consisting of A/SA” limitation.10

 B. Garrett does not teach away from the challenged claims.....12

 1. Garret does not teach away from compositions containing 7.5% dapsonе. 12

 2. Garrett does not teach away from either 30%-40% w/w or 30% w/w ethoxydiglycol. 15

 3. Garrett does not teach away from excluding adapalene..... 18

 C. Garrett is *not* incompatible with Nadau-Fourcade (Ground 1).20

 1. Compositions containing dissolved API would not have dissuaded a POSA. 20

 2. Carbopol® and A/SA copolymers are interchangeable thickeners. 21

 3. The claimed range of A/SA would have been obvious. 23

D.	The combination of Garrett and Bonacucina (Ground 2) renders the challenged claims obvious.....	24
1.	A POSA had multiple reasons to combine Garrett with Bonacucina.....	24
2.	Bonacucina renders 2% to 6% polymeric viscosity builder consisting of A/SA obvious.....	26
III.	ALMIRALL WAIVED OBJECTIVE INDICIA ARGUMENTS.	27

TABLE OF AUTHORITIES

CASES

Accord Healthcare Inc. v. Daiichi Sankyo Co., Ltd.,
(IPR2015-00865)14

Allergan, Inc. v. Sandoz Inc.,
726 F.3d 1286, 1292 (Fed. Cir. 2013)25

Almirall LLC v. Taro Pharm. Indus. LTD.,
C.A. No. 17-00663 (D. Del.)21

Conopco, Inc. v. Proctor & Gamble Co.
(IPR2013-00505)21

Daiichi Sankyo Co., Ltd. v. Apotex, Inc.,
501 F.3d 1254, 1257-58 (Fed. Cir. 2007)22

DuPont de Nemours & Co. v. Synvina C.V.,
904 F.3d 996, 1006(Fed. Cir. 2018)13

E.I. DuPont de Nemours & Co. v. Synvina C.V.,
904 F.3d 996, 100715

Galderma Laboratories, L.P. v. Tolmar, Inc.,
737 F.3d 731, 738-39 (Fed. Cir. 2013)27

In re Boesch,
617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980).....16

In re Crish,
393 F.3d 1253, 1257 (Fed. Cir. 2009)11

In re Fulton,
391 F.3d 1195, 1201 (Fed. Cir. 2004)7

In re Geisler,
116 F.3d 1465, 1469 (Fed. Cir. 1997)15

Case IPR2018-00608
Patent No. 9,161,926 B2

<i>In re Heck</i> , 699 F.2d 1331, 1333 (Fed. Cir. 1983)	13
<i>In re Mouttet</i> , 686 F.3d 1322, 1334 (Fed. Cir. 2012)	4
<i>Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.</i> , 868 F.3d 1013, 1017 (Fed. Cir. 2017)	8
<i>Pfizer, Inc. v. Apotex, Inc.</i> , 480 F.3d 1348 (Fed. Cir. 2007).....	26
<i>Shire Dev., LLC v. Watson Pharmas., Inc.</i> , 848 F.3d 981, 984 (Fed. Cir. 2017)	12
<i>SightSound Techs., LLC v. Apple Inc.</i> , 809 F.3d 1307, 1320 (Fed. Cir. 2015)	4
<i>Süd-Chemie, Inc. v. Multisorb Techs., Inc.</i> , 554 F.3d 1001 (Fed. Cir. 2009).....	19
<i>Unigene Labs., Inc. v. Apotex, Inc.</i> , 655 F.3d 1352 (Fed. Cir. 2011).....	22
<i>Upsher-Smith Labs., Inc. v. Pamlab, LLC</i> , 412 F.3d 1319, 1322 (Fed. Cir. 2005)	19
<i>Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC</i> , 683 F.3d 1356, 1364-65 (Fed. Cir. 2012)	22

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.