Paper No.____ Filed: July 6, 2018

Filed on behalf of: Mylan Pharmaceuticals Inc.

By: Steven W. Parmelee
Michael T. Rosato
Jad A. Mills
WILSON SONSINI GOODRICH & ROSATI
701 Fifth Avenue, Suite 5100
Seattle, WA 98104-7036

UNITED STA	ATES PATENT AND	TRADEMARK OFFICE
BEFORE TH	HE PATENT TRIAL	AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., Petitioner,

v.

ANACOR PHARMACEUTICALS, INC., Patent Owner.

U.S. Patent No. 9,549,938 to Baker *et al*.Ser. No. 15/068,352, filed March 11, 2016Issue Date: January 24, 2017

Title: BORON-CONTAINING SMALL MOLECULES

Inter Partes Review No. 2018-01358

PETITION FOR INTER PARTES REVIEW OF U.S. PATENT NO.9,549,938 UNDER 35 U.S.C. §§ 311-319 AND 37 C.F.R. §§ 42.100 et. seq.



TABLE OF CONTENTS

				Page
TAB	LE OF	CON	TENTS	I
EXH	IBIT L	.IST		VI
MAN	NDATO	ORY N	NOTICES	X
	1.	Real	Parties-In-Interest, § 42.8(b)(1)	X
	2.	Relat	ted Matters, § 42.8(b)(2)	X
	3.	Lead	and Back-Up Counsel, § 42.8(b)(3)	xii
	4.	Servi	ice Information, § 42.8(b)(4)	xii
		(i)	Electronic Mailing Addresss	xii
		(ii)	Postal Mailing Address	xii
INTF	RODU	CTION	N	1
GRO	UNDS	FOR	STANDING	2
BAC	KGRC	UND		2
I.	SCO	PE AN	ND CONTENT OF THE PRIOR ART	2
	A.	Boro	n-Containing Compounds In General	2
	B.	Prior	Art Patents And Printed Publications.	4
		1.	Austin	5
		2.	Brehove	8
		3.	Freeman	14
		4.	Samour	18
II.	LEVI	EL OF	FORDINARY SKILL IN THE ART	21
III.	THE	'938 F	PATENT PROSECUTION HISTORY	22
IDEN	NTIFIC	CATIO	ON OF THE CHALLENGE	26
IV.	CLA	IM CC	ONSTRUCTION	27



V.	HOV	V THE	CLAIMS ARE UNPATENTABLE	28
	A.		anation Of Ground 1 For Unpatentability: Claims 1 & 2 of 938 Patent are Obvious Over <i>Austin</i> in View of <i>Brehove</i>	30
		1.	All Elements of Claims 1 & 2 are Obvious Over Austin in View of Brehove	31
			a. Independent Claim 1	. 31
			b. Dependent Claim 2	32
		2.	A POSITA Would Have Had Reason to Combine Austin and Brehove	34
		3.	A POSITA Would Have Had a Reasonable Expectation of Success in Combining Austin and Brehove	37
	B.	the '	anation Of Ground 2 For Unpatentability: Claims 3–6 of 938 Patent are Obvious Over <i>Austin</i> in View of <i>Brehove Samour</i>	42
		1.	All Elements of Claims 3–6 are Obvious Over Austin in View of Brehove and Samour	43
		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	46
	C.		anation Of Ground 3 For Unpatentability: Claims 1 & 2 of 938 Patent are Obvious Over <i>Austin</i> in View of <i>Freeman</i>	48
		1.	All Elements of Claims 1 & 2 are Obvious Over <i>Austin</i> in View of <i>Freeman</i>	48
			a. Independent Claim 1	48
			b. Dependent Claim 2	50
		2.	POSITA Would Have Had Reason to Combine <i>Austin</i> and <i>Freeman</i>	52
		3.	A POSITA Would Have Had a Reasonable Expectation of Success in Combining <i>Austin</i> and <i>Freeman</i>	55
	D.	the '	anation Of Ground 4 For Unpatentability: Claims 3–6 of 938 Patent are Obvious Over <i>Austin</i> in View of <i>Freeman</i>	50



	1. All Elements of Claims 3–6 are Obvious Over <i>Austin</i> in View of <i>Freeman</i> and <i>Samour</i>	59
	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	62
E.	No Secondary Considerations Overcome This Strong Showing of Obviousness.	64
CONCLUS	SION	65



TABLE OF AUTHORITIES

CASES

Graham v. John Deere Co., 383 U.S. 1 (1966)	.29, 64
Hoffmann-La Roche Inc. v. Apotex Inc., 748 F.3d 1326 (Fed. Cir. 2014)	29
In re Baxter Travenol Labs., 952 F.2d 388 (Fed. Cir. 1991)	65
In re Bigio, 381 F.3d 1320 (Fed. Cir. 2004)	29
In re Clay, 966 F.2d 656 (Fed. Cir. 1992)	29
In re Gershon, 372 F.2d 535 (CCPA 1967)	65
In re ICON Health & Fitness, Inc., 496 F.3d 1374 (Fed. Cir. 2007)	30
In re Merck & Co., 800 F.2d 1091 (Fed. Cir. 1986)	31
In re Piasecki, 745 F.2d 1468 (Fed. Cir. 1984)	64
Innovation Toys, LLC v. MGA Entm't, Inc., 637 F.3d 1314 (Fed. Cir. 2011)	30
Kao Corp. v. Unilever United States, Inc., 441 F.3d 963 (Fed. Cir. 2006)	65
KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007)	passim



DOCKET

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.

