

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLATWING PHARMACEUTICALS, LLC and MYLAN
PHARMACEUTICALS, INC.,
Petitioners,

v.

ANACOR PHARMACEUTICALS, INC.,
Patent Owner.

Case IPR2018-00168 (Patent 9,549,938 B2)
Case IPR2018-00169 (Patent 9,566,289 B2)
Case IPR2018-00170 (Patent 9,566,290 B2)
Case IPR2018-00171 (Patent 9,572,823 B2)¹

Record of Oral Hearing
Held: March 1, 2019

Before GRACE KARAFFA OBERMANN, TINA E. HULSE, and
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

¹ Cases IPR2018-01358, -1359, -1360, and -1361 have been joined with
Cases IPR2018-00168, -169, -170, and -171, respectively.

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Case IPR2018-00171 (Patent 9,572,823 B2)

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The above-entitled matter came on for hearing on Friday, March 1, 2019, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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1 P R O C E E D I N G S

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3 JUDGE OBERMANN: Please be seated. It's going to take us just a
4 few minutes to wake up our computers.

5 JUDGE HULSE: Good morning, everyone. I'm Judge Hulse in
6 California; and with you in Alexander is Judge Obermann; and in Denver is
7 Judge Harlow. We are here for the final hearing in IPR2018-00168, -169, -
8 170, and -171, to which IPR2018-01358, -1359, -1360, and -1361 have been
9 joined.

10 Let's begin with appearances, starting with Petitioner FlatWing,
11 please.

12 MR. SEGREST: Yes, Your Honor, Philip Segrest for the Petitioner,
13 FlatWing. Also in the gallery is the counsel for the co-Petitioners, Mylan.

14 MR. PARMELEE: Steve Parmelee, Your Honor.

15 JUDGE HULSE: Would counsel for Mylan like to introduce himself?

16 MR. PARMELEE: Steve Parmelee. I'm from Wilson Sonsini for
17 Mylan Pharmaceuticals, Inc.

18 JUDGE HULSE: Thank you; and for Patent Owner?

19 MR. MAURER: Good afternoon, Your Honors. Aaron Maurer for
20 Patent Owner; and in court with me here today is my colleague Tony Sheh.

21 JUDGE HULSE: Thank you. Welcome everyone. As we stated in
22 our hearing order, each party will have 45 minutes of time to present their
23 arguments. We'll start with Petitioner and then hear Patent Owner's
24 response; and then assuming that both parties reserve time, we'll hear
25 Petitioner's rebuttal and Patent Owner's sur-rebuttal. Please remember that

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1 neither Judge Harlow nor I can see what's on the screen; so if you could
2 please be very specific as to where in the slides you are referring -- what
3 slide number, etc. We do have them electronically, so we can follow along
4 from here.

5 Judge Obermann will be timing you. She's in the room with you; and
6 so she'll let you know how much time you have left. Does anyone have any
7 questions?

8 MR. SEGREST: Does the display here show the time left or is that --

9 JUDGE OBERMANN: You're going to see the lights. They'll go
10 from green -- I think the yellow is going to be a two or three minute
11 warning. I can let you know; and then red means you're out of time. I'm
12 sorry we don't have the display -- but wait, maybe we will. I see the
13 display's up there.

14 MR. SEGREST: There's one here. I just didn't know if it was
15 working.

16 JUDGE OBERMANN: Yeah. You tell me how much time you want
17 to reserve and I'll put it on the clock.

18 MR. SEGREST: 15 minutes.

19 JUDGE OBERMANN: Fifteen; so, you're going to have 30 minutes
20 to start. Are you seeing that amount of time floating up there?

21 MR. SEGREST: Yes.

22 JUDGE OBERMANN: Okay. So, you'll have full warning. Let me
23 just get it to 30; and I won't begin the clock until you begin speaking.

24 JUDGE HULSE: Okay. Are we all set then? Mr. Segrest, you may
25 begin.

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1 MR. SEGREST: Thank you. May it please the Board, I'm going to
2 start pursuant to the guides the Board gave us -- departing a bit from the
3 slides -- I want to look first at this question of what's the scope of issues still
4 in dispute, especially in light of the previous IPRs. I'd like to refer the board
5 to Exhibit 1017. It's the decision in one of the three previous IPRs, page 50;
6 and there's a paragraph there which I think explains where we're at in this
7 case as well.

8 It reads that, further, for the same reason set forth above with respect
9 to claim 6, we credit Dr. Murthy's testimony that "formulating
10 pharmaceutical compositions was well known in the art of cosmetics and
11 topical pharmaceuticals. And a number of non-toxic pharmaceutical
12 acceptable solvents were known, including water and ethanol." And
13 "formulating pharmaceutical compositions involve nothing more than
14 routine experimentation based on well-known protocols." And that the '657
15 Patent does not "describe any unexpected results attributable to the claimed
16 pharmaceutical formulation of claim 9. Of course, we're looking a different
17 patent now, but the same principle still applies -- formulating pharmaceutical
18 compositions. It's still well known to those in the art. It still involves
19 routine experimentation.

20 At this point, we're down to one claim limitation that we're looking at
21 which is the 5 percent white weight of Tavaborole in the claims that are still
22 asserted. Most of the claims have dropped out. That 5 percent white weight
23 of Tavaborole doesn't have any unexpected results associated with it. There
24 needs to be something special about it because the prior art showed ranges
25 all around this. There's nothing special about 5 percent. There're no

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