

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner

v.

BIOGEN MA INC.,
Patent Owner

Case IPR2018-01403
Patent 8,399,514 B2

DECLARATION OF DANIEL WYNN, M.D. FACNS FAASM

Contents

I.	INTRODUCTION	4
II.	PROFESSIONAL BACKGROUND AND QUALIFICATIONS	4
III.	MATERIALS CONSIDERED	6
IV.	OVERVIEW OF MULTIPLE SCLEROSIS.....	6
	A. Background on Multiple Sclerosis.....	6
	B. Clinical Measures of Multiple Sclerosis.....	9
V.	BIOGEN’S ’514 PATENT	15
	A. PERSON OF ORDINARY SKILL IN THE ART	23
VI.	THE ASSERTED REFERENCES AND MYLAN’S ADDITIONAL CITATIONS	24
	A. The Schimrigk 2004 Abstract (Ex. 1006).....	24
	B. Biogen’s Phase II MS Trial	26
	i. January 2006 Press Release (Ex. 1005).....	26
	ii. Clinical Trials (Ex. 1010).....	26
	iii. Kappos 2006 (Ex. 1007).....	27
	C. WO 2006/037342 (Ex. 1008).....	28
	D. Joshi ’999 (Ex. 1009).....	30
	E. ICH Guidelines (Ex. 1011).....	31
VII.	THE ’514 PATENT CLAIMS ARE NOT OBVIOUS	33
	A. Biogen’s Phase II Study Did Not Establish an Effective Dose Range of DMF to Treat MS	33
	B. A Person of Ordinary Skill in the Art Would Not Have Reanalyzed the Phase II Results	35
	C. Side Effects and Patient Compliance Would Not Have Pointed a Person of Ordinary Skill in the Art to a Daily Dose of 480 mg/day to Treat MS	41
	D. January 2006 Press Release in view of Schimrigk 2004 Abstract Does Not Render the ’514 Patent Claims Obvious	44

E.	Kappos 2006 in View of Schimrigk 2004 Abstract Does Not Render the '514 Patent Claims Obvious.....	53
F.	Kappos 2006 in view of WO '342 Does Not Render The '514 Patent Claims Obvious.....	54
i.	The Disclosure of WO '342	54
ii.	WO '342 Discloses a Long List of Wide-Ranging Conditions.....	56
iii.	WO '342 Discloses a Broad Class of Fumaric Acid Esters	57
iv.	WO '342 Discloses Indiscriminate Possible Fumaric Acid Ester Doses	59
v.	WO '342 Does Not Describe a Method of Treating a Subject in Need of Treatment for Multiple Sclerosis.....	61
vi.	A Person of Ordinary Skill in the Art Would Not Have Recognized in WO '342 the Existence of Any Particular Dose of Any Particular Agent for the Treatment of MS, Much Less Biogen's Specific MS Treatment Claimed in the '514 Patent	62
G.	Kappos 2006, Clinical Trials, Joshi '999 and ICH Guidelines Do Not Render The '514 Patent Claims Obvious	66
VIII.	Unexpected Results	71
IX.	BIOGEN'S '921 PROVISIONAL DESCRIBES AND ENABLES ALL TWENTY CLAIMS IN THE '514 PATENT.....	78
A.	The '921 Provisional Provides Written Description Support for All of the '514 Patent Claims	79
B.	The '921 Provisional Enables the '514 Patent Claims	86
X.	BIOGEN'S INTERNATIONAL PATENT APPLICATION NO. PCT/US2008/001602 DESCRIBES AND ENABLES ALL TWENTY CLAIMS IN THE '514 PATENT	89
XI.	CONCLUSION.....	92

I. INTRODUCTION

1. I have been engaged by counsel for Biogen MA Inc., Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, as an expert consultant for this *inter partes* review proceeding. I am being compensated at a rate of \$1,000 per hour, plus reimbursement for related out-of-pocket expenditures. My compensation is not contingent upon my opinions or the outcome of this or any other proceeding.

2. I understand that the patent involved in this proceeding is U.S. Patent No. 8,399,514 (Ex. 1001, “the ’514 patent”).

II. PROFESSIONAL BACKGROUND AND QUALIFICATIONS

3. I am the Director of Clinical Research and Director of the Multiple Sclerosis Center at Consultants in Neurology in Northbrook, Illinois. Consultants in Neurology is a large specialty practice focusing on the evaluation and treatment of multiple sclerosis and other neurological conditions. As Director of Clinical Research and Director of the Multiple Sclerosis Center, I supervise clinicians and oversee operations in the Multiple Sclerosis Center, train and manage research staff, and maintain an active clinical practice evaluating and treating patients where about 85% of my practice involves individuals with multiple sclerosis (MS). My current practice also includes continuous involvement in clinical trials, often as principal investigator, and research concerning the development of new therapeutics.

4. I received my medical doctorate from The Chicago Medical School and completed residencies in internal medicine and neurology at the Mayo Graduate School of Medicine in Rochester, Minnesota, where I also received EEG and sleep disorder/polysomnography fellowships. I have expertise in a wide variety of neurological disorders with particular emphasis on MS. I have over 31 years of experience as a clinician diagnosing, evaluating, and treating patients for their MS. In my clinical practice, I typically see about 1,500 unique MS patients per year.

5. I am board certified in neurology, clinical neurophysiology (EEG, EMG and neuromuscular disease), and sleep disorders medicine. I am a fellow in the American Clinical Neurophysiology Society (FACNS) and the American Academy of Sleep Medicine (FAASM). I have affiliations with many hospitals and am a member of numerous professional organizations including Alpha Omega Alpha Honor Medical Society, National Multiple Sclerosis Society, American Academy of Neurology, American Academy of Clinical Neurophysiology, and American Medical Association. I am also a Board Member and serve on the Clinical Advisory Committee of the National Multiple Sclerosis Society, Chicago-Greater Illinois Chapter.

6. I have authored or co-authored over 130 peer-reviewed articles and commentaries in addition to numerous non-reviewed works. I have been published in leading medical journals, including *The New England Journal of Medicine*,

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.