

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 No. 8,399,514

Before SHERIDAN K. SNEDDEN and JACQUELINE T. HARLOW,
Administrative Patent Judges.

SNEDDEN, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

In an email correspondence sent to the Board on November 30, 2018, the counsel for Petitioner requested a teleconference to seek permission to file a three-page reply to the Patent Owner Preliminary Response. The relevant portion of the email reads as follows:

Patent Owner Biogen MA, Inc.'s ("Biogen") preliminary response asks the Board to deny institution of Mylan's IPR based on, *inter alia*, the Federal Circuit's October 24, 2018 decision in *FWP IP APS v. Biogen MA, Inc.*, No. 2017-2109. *See, e.g.*, Paper No. 7 at 2, 15-16, 33-34, 45, 47. That decision concerns Interference No. 106,023 and the '514 patent challenged here. Among other things, Biogen claims the Federal Circuit's opinion "confirmed that Biogen's unexpected results are 'significant.'" *Id.* at 2. Mylan disagrees, and respectfully requests an opportunity to respond. Because the Federal Circuit's decision was published several months after the July 13, 2018 filing date of Mylan's Petition, it was impossible for Mylan to address the decision in its Petition. Given the timing of the Federal Circuit's decision, and the fact that it involves the same patent at issue here, Mylan believes that there is good cause to grant this request.

Patent Owner opposes Petitioner's request.

Given the timing of the Federal Circuit's opinion, we authorize Petitioner to file a reply and Patent Owner to file a sur-reply.

Upon consideration thereof, it is hereby:

ORDERED that Petitioner may file a 3-page reply brief to Patent Owner's Preliminary Response within 7 days of the entry of this Order; and

FURTHER ORDERED that Patent Owner may file a 3-page sur-reply in response to Petitioner's Reply within 7 days of the filing of Petitioner's Reply.

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Patent No. 8,399,514 B2

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