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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX, INC.,
Petitioner,

v.

UCB BIOPHARMA SPRL,
Patent Owner.

U. S. Patent No. 8,633,194
Inter Partes Review No. : IPR2019-00400

REPORT OF PROCEEDINGS via teleconference of
the above-entitled cause before Judges Robert A.
Pollock, Ryan H. Flax, and Kristi L.R. Sawert,
Judges of said Panel, on the 3rd day of April 2020
at the hour of 4:00 p.m. EST.

Reported by: Sandra Rocca

Certification No. 084-003435

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A P P E A R A N C E S :

KATTEN MUCHIN ROSENMAN, LLP
By: MR. JITENDRA MALIK
MS. ALISSA PACCHIOLI
550 South Tryon Street, Suite 2900
Charlotte, North Carolina 28202

appeared on behalf of the
Petitioner;

FENWICK & WEST LLP
By: MR. ROBERT COUNIHAN
MR. JAMES TRAINOR
MS. ERICA R. SUTTER
902 Broadway, Suite 14
New York, New York 10010

appeared on behalf of the
Patent Owner.

(All parties appeared via teleconference.)

1 JUDGE POLLACK: Good afternoon. This
2 hearing is for IPR2019-00400. I'm Judge Pollack.
3 Judges Sawert and Flax are on the line as well. Who
4 do we have for Patent Owner UCB?

5 MR. COUNIHAN: Good afternoon, Your Honor.
6 This is Robert Counihan from Fenwick. Joined with
7 me, not in person but they should be on the line,
8 are lead counsel, James Trainor, and our associate,
9 Erica Sutter.

10 JUDGE POLLACK: Good afternoon,
11 Mr. Counihan. Who is on the line for Petitioner
12 Apotex?

13 MR. MALIK: Good afternoon, Your Honor.
14 This is Jitendra Malik from the law firm of Katten
15 and with me is Alissa Pacchioli, also from the law
16 firm of Katten.

17 JUDGE POLLACK: Good afternoon as well. I
18 understand there's a court reporter on the line,
19 correct?

20 CERTIFIED STENOGRAPHER: Yes, there is.

21 JUDGE POLLACK: Very good. Petitioner shall
22 file the transcript pursuant to the Trial Practice
23 Guide as stated in the email of -- I believe it was
24 earlier today.

25 MR. MALIK: Yes, sir.

1 JUDGE POLLACK: On April 2nd, Patent Owner
2 sent us an email requesting a conference to discuss
3 "immediate expungement" of certain portions of
4 paper 43, Petitioner's motion to exclude. As we
5 understand the email, Patent Owner believes the
6 Petitioner failed to timely file objections to
7 Dr. Niazi's declaration.

8 Patent Owner, assuming for the sake of
9 argument that your allegations are correct, why do
10 you think it is necessary for the Panel to take this
11 highly unusual step of expungement rather than
12 consider the matter in due course and in light of
13 your opposition to Petitioner's motion?

14 MR. COUNIHAN: Yes, Your Honor. Thank you
15 very much for having a conference call on short
16 notice like this. It's not just timeliness, it's
17 also the detail of the objection and the form in
18 which they were provided. The rule 37 42.64 is very
19 clearly there to allow in this situation the Patent
20 Owner the opportunity to correct any issues that the
21 in the situation the Petitioner might object to.

22 And the way that Patent Owner handled this
23 situation, in our view, has substantially prejudiced
24 us. And so our belief is that given the numerous
25 procedural defects, there's no reason to even

1 require my side to take the time to write up a
2 response or for the Board to expend judicial
3 resources considering the motion.

4 JUDGE POLLACK: Won't we be expending
5 judicial resources to consider whether or not --
6 this extraordinary measure of expunging a motion
7 that's not been fully briefed?

8 MR. COUNIHAN: I understand that, Your
9 Honor. I think that the issues that we raised can
10 be considered just based on the first sentence of
11 their motion because they identified the source of
12 the objection, which is just two parts of a
13 deposition transcript where they essentially just
14 read back the regulatory provision of the CFR that
15 they moved under. And so the basis of their motion
16 is that our expert withheld material from them and
17 as a result, his opinions are unreliable.

18 However, their objection made at the
19 deposition did not identify that material that was
20 allegedly withheld. And then what they did from
21 there is they did not seek relief from the Board
22 immediately to file a motion to strike, which was
23 the motion they told us about at the deposition.
24 Nor did they file any written objections so that we
25 could then take appropriate action on our end.

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