UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD
AQUESTIVE THERAPEUTICS, INC.
Petitioner
v.
NEURELIS, INC.

Case: IPR2019-00449

Patent Owner

U.S. Patent No. 9,763,876

PETITIONER'S REQUEST FOR REHEARING PURSUANT TO 37 C.F.R. § 42.71(d)



TABLE OF CONTENTS

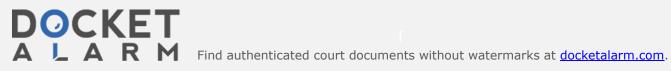
TABLE OF AUTHORITIES ii
PRELIMINARY STATEMENT
PTAB'S DECISION WITH RESPECT TO CARTT '865 IN VIEW OF UEDA3
MOTIVATION TO COMBINE CARTT '865 AND UEDA5
PETITIONER'S CARTT '865 IN VIEW OF UEDA FOR CLAIM 88
'876 Patent Claim 1 is expressly disclosed by Cartt '865 in view of Ueda8
Claim 8 of '876 Patent expressly disclosed by Ueda
Claim 15 of '876 Patent is obvious over Cartt '876 in view of Ueda with an
unexpected results/criticality/optimization argument11
DR. PEPPAS'S DECLARATION, POINTED TO IN THE PETITION,
CONFIRMS CLAIM 8 DID NOT RELY ON ANY UNEXPECTED
RESULTS/CRITICALITY/ OPTIMIZATION ARGUMENTS, WHILE CLAIM
15 DID RELY ON THESE ARGUMENTS
CONCLUSION 15



TABLE OF AUTHORITIES

C_{a}	c	۵	c
∟ a	3	ᆮ	э

PGS Geophysical AS v. Iancu, 891 F.3d 1354 (Fed. Cir. 2018)	2
SAS Inst., Inc. v. Iancu, 138 S. Ct. 1348 (2018)	2



PRELIMINARY STATEMENT

Pursuant to 37 C.F.R. § 42.71(d), Petitioner Aquestive Therapeutics, Inc. respectfully requests rehearing of the Decision Denying Institution of *Inter Partes* Review of claims 8-10, 15 and 30-36 of U.S. Patent No. 9,763,876 (the '876 Patent') entered August 1, 2019 (Paper 7) in IPR2019-00449 ("Decision").

In the Decision, the Board misapprehended and/or overlooked Petitioner's "stand-alone" argument that claim 8 is obvious over Cartt '865 (Exhibit 1010) in view of Ueda (Exhibit 1019) – an argument that does not include unexpected results/criticality/optimization as its basis. Instead the Board appeared to conflate this argument with Petitioner's arguments regarding obviousness over Cartt '865 in view of Ueda for claim 15 (among other claims) – arguments which do have unexpected results/criticality/optimization as their basis. A POSITA would have had ample motivation to expressly combine Cartt '865 with Ueda, given their respective teachings. Moreover, their combination expressly disclose all the limitations of claim 8 (as well as claim 1, from which it depends), rendering claim 8 unpatentable. The Board, in effect, added a criticality argument to Petitioner's claim 8 obviousness argument of Cartt '865 in view of Ueda, and in so doing,

¹ August 31st was a Saturday, September 1 and September 2 were a Sunday and Labor Day, respectively, so this request filed September 3rd is timely.



never addressed Petitioner's argument, and thus wrongly denied institution of claim 8 on the basis of "criticality." Decision, p. 21.

Petitioner's argument in the Petition as to why claim 8 is obvious is straightforward. See Petition, pp. 32-33, 60-63, 74-76. First, Cartt '865 in view of Ueda expressly discloses all the limitations of claim 1 of the '876 Patent. Ueda provides the express ethanol/benzyl alcohol combination. Second, claim 8 merely adds specified broad ranges to the ethanol/benzyl alcohol combination of claim 1. Claim 8 is therefore obvious over Cartt '865 in view of Ueda's express disclosure of combinations of ethanol and benzyl alcohol in amounts falling directly within the ethanol/benzyl alcohol ranges recited in claim 8. See Petition, pp. 61-63, 74-77, Paper 2 and discussion below. Thus, as discussed further below, Petitioner's stand-alone obviousness argument in its Petition demonstrates that at least claim 8 is obvious over Cartt '865 in view of Ueda. Therefore, Petitioner requests that IPR2019-00449 be instituted.

Due in part to space limitations, Petitioner is limiting its focus herein to claim 8. Petitioner understands that if the Board decides that Petitioner has demonstrated a reasonable likelihood that at least claim 8 is obvious, then in accordance with *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018) and *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018), the Board will institute on all claims and grounds. However, while Petitioner is only addressing



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