

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AQUESTIVE THERAPEUTICS, INC.,

Petitioner,

v.

NEURELIS, INC.,

Patent Owner.

Case IPR2019-00451

Patent 9,763,876

PATENT OWNER'S SURREPLY

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I. INTRODUCTION

Aquestive’s new theories in its Reply underscore its Petition’s deficiencies. As an initial matter, Aquestive’s new theories fail to undo the damaging testimony from its Petition expert, Dr. Peppas, despite a 125-page declaration from a brand-new expert, Dr. Wermeling (which, remarkably, expressly ignores the original Petition). The Reply materials consistently disregard and misstate the evidence—including Dr. Wermeling’s clear recognition of a “significant unmet medical need to serve the pharmacotherapeutic requirements of epilepsy patients through commercial development and marketing of intranasal antiepileptic products” in 2009. EX1151, 352; EX2031, 127:4-130:3. Aquestive’s wholesale replacement of its initial theories cannot rescue the failed Petition, and fundamentally prejudices Neurelis because Neurelis cannot at this stage file its own rebuttal evidence.¹

Because Aquestive cannot prevail without new theories and new evidence,

¹ Aquestive’s Reply shenanigans are part of an ongoing harassment campaign against Neurelis—here, at the FDA, and in the press—to distract investors from Aquestive’s failure to produce its buccal epilepsy therapy and has forced Neurelis to pursue a tort action against Aquestive in California superior court. *Neurelis, Inc. v. Aquestive Therapeutics, Inc.*, No. 37-2019-00064665 (Super. Ct. Cal., San Diego).

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