

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

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

PATENT OWNER NEURELIS, INC.'S NOTICE OF APPEAL

Pursuant to 35 U.S.C. §§141(c), 142, and 319, and 37 C.F.R. §90.2(a), Neurelis, Inc. (“Patent Owner”) respectfully gives notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board’s (the “Board”) Final Written Decision entered on August 6, 2020 (Paper 44), and from all other underlying orders, decisions, rulings, and opinions. This Notice of Appeal is timely filed under 35 U.S.C. §142, Fed. Cir. R. 15(a)(1), and 37 C.F.R. §90.3.

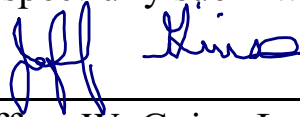
For the limited purpose of providing the Director of the United States Patent and Trademark Office with the information specified in 37 C.F.R. §90.2(a)(3)(ii), the issues on appeal include the Board’s determination that claims 1-36 of U.S. Patent No. 9,763,876 (“’876 Patent”) were shown to be unpatentable under 35 U.S.C. §103 in view of the grounds of unpatentability identified in the Board’s Final Written Decision. The issues on appeal also include any Board finding or conclusion supporting or related to this determination, as well as all other decisions adverse to Patent Owner in any Board order, decision, ruling, or opinion. These issues include, but are not limited to, the following: (1) whether the Board erred in applying the wrong standards and burdens to conclude that the claims of the ’876 Patent were not entitled to benefit of the priority filing date of U.S. Provisional Patent Application No. 61/040,558 (“’558 Provisional”), leading the Board to apply non-prior art references to the claims, and leading the Board to conclude the

claims were obvious over these references; (2) whether the Board erred in holding the '879 Patent claims were obvious over U.S. Patent Application Publication No. 2008/0279784 to Cartt, U.S. Publication No. 2006/0046962 to Meezan, and PCT Publication No. WO 2009/1209033 to Gwozdz; (3) whether the Board misconstrued dependent claims of the '876 Patent to require a generic "alkyl glycoside", thereby overlooking uncontested express support in the '558 Provisional for those claims; and (4) whether the Board violated administrative-law requirements by introducing its own new and erroneous legal theories without providing Patent Owner adequate opportunity to respond.

This Notice of Appeal is being filed at the Board electronically via the PTAB E2E system, and with the Director at the address provided in 37 C.F.R. §104.2, in accordance with 37 C.F.R. §90.2(a)(1); and is being served on the Petitioner in accordance with 37 C.F.R. §42.6(e). This Notice of Appeal, along with the required fee in accordance with Fed. Cir. R. 15(a)(4) and 52, is also being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit in accordance with Fed. Cir. R. 15(a)(1).

Dated: October 7 2020

Respectfully submitted,



Jeffrey W. Guise, Lead Counsel
Reg. No. 34,613

CERTIFICATE OF SERVICE

I certify that this paper was served on counsel for the petitioner at the following email addresses:

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Respectfully submitted,

Dated: October 8, 2020

/Robyn Moriarty/
Robyn Moriarty

CERTIFICATE OF FILING

Pursuant to 37 C.F.R. §90.2(a), 35 U.S.C. §142, and 37 C.F.R. §104.2, this is to certify that on this 8th day of October, 2020, I caused to be filed the foregoing **PATENT OWNER NEURELIS, INC.’s NOTICE OF APPEAL** with the following:

- the Director of the United States Patent and Trademark Office by hand-delivery to

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
10B20, Madison Building East
600 Dulany Street
Alexandria, VA 22314

- the Patent Trial and Appeal Board through the Board’s PTAB E2E System
- the Clerk of the United States Court of Appeals for the Federal Circuit through the CM/ECF filing system together with the requisite filing fee submitted via pay.gov

Respectfully submitted,

Dated: October 8, 2020

/Robyn Moriarty/
Robyn Moriarty