

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4 MYLAN PHARMACEUTICALS,)
5 INC.,)
6 Petitioner,)
7) U. S. Patent No.
8 vs.) 7,326,708
9 MERCK SHARP & DOHME)
10 CORPORATION,)
11 Patent Owner.)
12 _____)

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REPORT OF PROCEEDINGS via teleconference of
the above-entitled cause before the Honorable
Timothy G. Majors, Robert A. Pollock and Sheridan K.
Snedden, Judges of said Panel, on the 4th day of
March 2020 at the hour of 2:00 p.m.

Reporter by: Sandra Rocca
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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;

WILLIAMS & CONNOLLY, LLP
By: MR. ANTHONY SHEH
MR. BRUCE GENDERSON
725 12th Street, NW
Washington, D.C. 20005-5901

appeared on behalf of the
Patent Owner.

(All parties appeared via teleconference.)

1 JUDGE MAJORS: Why don't we kick things off.
2 Again this is Judge Majors talking. We're here
3 today for a request for a conference in IPR2020 0040
4 based on Petitioner's request for additional
5 pre-institution briefing.

6 We've reviewed the email correspondence.
7 The way we'll quick things off today is we'll open
8 the floor up to Petitioner. Petitioner, you can
9 state the reasons for the request. To the extent
10 they go beyond the email, that's fine. Patent
11 Owner, then we'll open up the floor to you to
12 respond, and we can then table whether or not there
13 will be any opportunity for further reply if
14 necessary. But we may also jump if in if we have
15 questions along the way.

16 Before we get going, just a couple of
17 preliminary things. Is there a court reporter
18 online?

19 CERTIFIED STENOGRAPHER: Yes, there is. I'm
20 here.

21 JUDGE MAJORS: Thank you. All right. And
22 why don't we go ahead and take a quick role call,
23 and whoever is going to be doing the talking for the
24 particular party, just let me know that. That would
25 be helpful. Why don't we start with Petitioner.

1 Counsel, who do we have online?

2 MR. MALIK: Good afternoon, Your Honor.

3 This is Jitendra Malik, lead counsel for Mylan. And
4 with me is Alissa Pacchioli, backup counsel for
5 Mylan.

6 JUDGE MAJORS: Okay, thank you. Did you
7 say, Mr. Malik? Is that how it's pronounced?

8 MR. MALIK: Yes, sir.

9 JUDGE MAJORS: Thank you. For Patent Owner?

10 MR. GENDERSON: Good afternoon, this is Tony
11 Sheh from Williams & Connelly on behalf of Patent
12 Owner. I'm joined by Bruce Genderson, also Williams
13 Connelly on behalf of Patent Owner.

14 JUDGE MAJORS: Okay. And thank you,
15 Mr. Sheh and Genderson. All right, so with that,
16 why don't we kick things off. Again, we'll open the
17 floor up to Petitioner, Mr. Malik, I assume you'll
18 be doing the talking. And with that, you can go
19 ahead and begin when you're ready.

20 MR. MALIK: Good afternoon, Your Honor.
21 Jitendra Malik, counsel for Mylan. I guess the
22 easiest way is to kind of break this up into smaller
23 pieces. I think the first part is the five-page
24 reply dealing just with the antedating evidence. I
25 don't think there seems to be much of a dispute

1 between the parties as to whether or not that
2 information in the POPR was foreseeable. So unless
3 the panel has specific questions, I can move on to I
4 guess the crux of the dispute which would be the
5 314, 325(d) related issues and whether that's
6 permitted and then also, I'll address the
7 Petitioner's opposition to the surreply.

8 JUDGE MAJORS: Sure, that's fine. If you
9 wouldn't mind, could just say for us what -- at
10 least from Petitioner's perspective, what the
11 antedation -- is this just a sort of prototypical,
12 we've reduced to practice the invention before such
13 and such prior art.

14 MR. MALIK: Yes. The prior art is WO 0 --
15 forgive me, I don't have the number off the top of
16 my head. But yes, they believe that they reduced --
17 the actual reduction to practice prior to the date
18 of -- one or two a date of the WO reference that we
19 use in several of our grounds.

20 JUDGE MAJORS: Okay. And they have several
21 declarations I think you said in the email in
22 support of that.

23 MR. MALIK: Yes. Several declarations and I
24 think they attached some lab notes and various other
25 I guess experimental data or production that they

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