

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROLLENIUM US INC.,
Petitioner,

v.

ALLERGAN INDUSTRIE, SAS,
Patent Owner.

Case IPR2020-00084
Patent 9,089,519

**PATENT OWNER ALLERGAN INDUSTRIE, SAS'S
PRELIMINARY RESPONSE**

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EXHIBIT LIST

Exhibit No.	Exhibit Description
2001	Juvéderm Ultra™ XC Label
2002	Juvéderm Ultra Plus™ XC Label
2003	Juvéderm Voluma®XC Label
2004	U.S. Patent Publication No. 2004/0101959 to Marko et al, published May 27, 2004
2005	Excerpts from U.S. 8,822,676 file history
2006	Excerpts from U.S. 9,089,519 file history
2007	About Juvéderm Ultra Plus™ XC
2008	About Juvéderm Volbella® XC
2009	About Juvéderm Voluma® XC

I. INTRODUCTION

U.S. Patent No. 9,089,519 (“the ’519 patent”) relates to lidocaine-containing dermal fillers that Allergan sells under the trade name “JUVÉDERM®.” After extensive prosecution of this application, the Examiner allowed the claims based on the Applicant’s evidence of unexpected results. In particular, the Examiner found that the Applicant unexpectedly found that the claimed hyaluronic acid soft tissue fillers did not result in instability, contrary to what those of ordinary skill in the art at the time of the invention would have expected.

The present Petition, which challenges claims 1-8 of the ’519 patent on three anticipation and two obviousness grounds, should be denied.¹ The anticipation challenges should be denied because the supporting references for Grounds 1-3 (P050047/S005 (Ex. 1060), Weinkle (Ex. 1070), and U.S. 2010/0028438 (Ex. 1072)) do not qualify as prior art under AIA § 102(a). In addition, Ground 5 should be denied because Petitioner fails to prove that P050047 (Ex. 1074) qualifies as a printed publication under pre-AIA § 102(b). Finally, the Board should deny Grounds 4 and 5 under Section 325(d) because the Petition fails to provide new evidence or new arguments that are different from those considered during prosecution. Rather, the Petition uses references cited during prosecution of

¹ Petition at 1-2.

the '519 patent family, or replaces them with cumulative references, and then rehashes the same arguments that were presented and overcome during prosecution. The allegedly new evidence is merely unsupported and conclusory expert opinion.

Critically, the Petition offers no new evidence that refutes the Examiner's conclusion that the evidence of unexpected results submitted during prosecution made the claims patentable. Petitioner simply wants the Board to second-guess the Examiner. Such tactics waste party and Board resources, and should result in denial of all grounds under Section 325(d).

II. THE '519 PATENT

The '519 patent relates to injectable dermal, subdermal, and soft tissue filler compositions made from crosslinked hyaluronic acid ("HA") that include an anesthetic agent (lidocaine).² Allergan sells these compositions under the trade name "JUVÉDERM®."³ These gels are used to fill voids in the patient's skin, e.g., wrinkles in the patient's face.⁴ As a result, it is desirable for the gel to maintain the filling effect for a long time, e.g., 26 weeks up to 2 years.⁵ But HA

² Ex. 1001 at 1:20-23; 2:40-53.

³ Exs. 2001-2003.

⁴ Ex. 1001 at 1:27-38.

⁵ *See e.g.*, Exs. 2007-2009.

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