

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS INC., CELLTRION, INC., and  
APOTEX, INC.,  
Petitioners

v.

REGENERON PHARMACEUTICALS, INC.  
Patent Owner

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Case IPR2021-00881<sup>1</sup>  
Patent 9,254,338 B2

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**RESPONSE TO PETITIONER'S IDENTIFICATION OF STATEMENTS  
SUPPORTED BY OBJECTED TO REFERENCES IN PATENT OWNER  
RESPONSES**

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<sup>1</sup> IPR2022-00258 and IPR2022-00298 have been joined with this proceeding.

In accordance with the Board’s order during the teleconference held on February 23, 2022, Patent owner hereby submits its response to Petitioner’s Identification of Statements Supported by Objected to References in Patent Owner Responses. Paper No. 44; *see also* Ex. 1100 Transcript of Teleconference Proceedings held on February 23, 2022, at 16:22-19:7.

Petitioner’s Challenge	Patent Owner Response—Arguments and Evidence
<p>IPR2021-00881, Patent No. 9,254,338</p> <ul style="list-style-type: none"> <li>• Paper 40 (POR)</li> <li>• Section VIII.B, (Paper 40, pp. 58-62, entitled “Objective Evidence Confirms the Non-Obviousness of the Claimed Dosing Regimen”).</li> <li>• Ex. 2051, Do Decl. ¶¶98-133, 135-170</li> </ul>	<p><b>Nexus</b>—Paper 40, pp. 58-60; <i>see, e.g., id.</i>, p. 59 (“A nexus exists between the Challenged Claims and both EYLEA®’s approved dosing regimen (the “Eylea Label” or “EL”) and physicians’ administration of EYLEA in practice (“Physicians’ Practice” or PP, and together with EL, “EL&amp;PP”)); <i>id.</i>, 58-59 (chart arguing that a nexus exists between each limitation of each challenged claims and the Eylea Label, Physicians’ Practice, or both).</p> <p><i>See also</i> Ex. 2051 (Do Decl.), ¶¶98-133 (the United States prescribing information for Eylea demonstrates practice of the challenged claims); <i>id.</i>, ¶¶134-170 (physicians’ administration of Eylea to patients practices the challenged claims).</p>
<p>IPR2021-00881, Patent No. 9,254,338</p> <ul style="list-style-type: none"> <li>• Paper 40 (POR)</li> <li>• Section I, (Paper 40, pp. 1-3, entitled “Introduction”).</li> <li>• Section VIII.B, (Paper 40, pp. 54, 58-62 entitled “Objective</li> </ul>	<p><b>Commercial success</b>—Paper 40, pp. 1-3, 54, 58-62; <i>see, e.g., id.</i>, p. 1. (“Despite launching into a competitive market, EYLEA quickly became the preeminent treatment for angiogenic eye disorders including wAMD, diabetic macular edema, macular edema following retinal vein occlusion, and diabetic retinopathy.”); <i>id.</i>, p. 2 (“EYLEA has enjoyed rapid clinical adoption and great commercial success.”); <i>id.</i>, pp. 61-62 (“Regeneron’s U.S. sales of EYLEA, as well as EYLEA’s share of sales relative to other anti-VEGF treatments, have grown significantly</p>

Petitioner's Challenge	Patent Owner Response—Arguments and Evidence
<p>Evidence Confirms the Non-Obviousness of the Claimed Dosing Regimen”).</p> <ul style="list-style-type: none"> <li>Ex. 2052, Manning Decl. ¶¶29-42, 48-117</li> </ul>	<p>since launch.”); <i>id.</i> (“[T]he ’338 Patent’s claimed dosing regimen has been an important factor driving demand for EYLEA.”); <i>id.</i>, n. 18 (“EYLEA’s commercial success does not appear to be due to marketing efforts....”).</p> <p><i>See also</i> Ex. 2052 (Manning Decl.), ¶¶29-42 (treatment options for angiogenic eye disorders); <i>id.</i> ¶¶48-85 (Eylea was a commercial success); <i>id.</i>, ¶¶89-104 (the claimed dosing regimen is a driver of the demand for Eylea); <i>id.</i>, ¶¶105-117 (Eylea’s commercial success cannot be explained by factors not related to the claimed methods of treatment).</p>
<p>IPR2021-00881, Patent No. 9,254,338</p> <ul style="list-style-type: none"> <li>Paper 40 (POR)</li> <li>Section VIII.B, (Paper 40, pp. 58-62, entitled “Objective Evidence Confirms the Non-Obviousness of the Claimed Dosing Regimen”).</li> <li>Ex.2050, Brown Declaration ¶¶150-181</li> </ul>	<p><b>Long-felt but unmet need, failure of others, unexpected benefit, and industry praise</b>—Paper 40, pp. 1-6, 13, 53-54, 58-62; <i>see, e.g., id.</i>, p. 54 (“[T]he long-felt need and failure in the art to develop an extended dosing regimen ... confirm the non-obviousness of the claimed dosing regimen.”); <i>id.</i>, 60-62 (“[T]he art was littered with failed efforts to extend dosing of anti-VEGF agents, which made Regeneron’s clinical trial results all the more unexpected.”); <i>id.</i> pp. 3-6 (“Numerous attempts were made to decrease injection or monitoring frequency with ranibizumab, including the PIER, PrONTO, SAILOR, EXCITE, and SUSTAIN clinical trials. Each of these efforts at extended dosing in the art failed ....”) (internal citations omitted); <i>id.</i>, p. 13 (“[T]here remained a need in the art to reduce the burden of frequent injections and monitoring visits while maintaining the high level of efficacy....”).</p> <p><i>See also</i> Ex. 2052 (Brown Decl.), ¶¶45, 75-85, 156-176 (satisfaction of a long felt but unmet need); <i>id.</i>, ¶¶46-69, 110-113; 160-173: (failure of others); <i>id.</i>, ¶¶75-90, 174-181 (unexpected benefits and industry praise).</p>

Petitioner's Challenge	Patent Owner Response—Arguments and Evidence
IPR2021-00880, <ul style="list-style-type: none"> <li>• Paper 39 (POR)</li> <li>• Section V, (Paper 39, pp. 7-9, entitled “Claim Construction”)</li> <li>• Section V, (Paper 39, p. 8 n. 5)</li> </ul>	<b>Claim construction</b> —Paper 39, pp. 7-9, n. 5; <i>see, e.g., id.</i> , p. 8 (Claim construction “is not necessary to resolve the arguments presented in Mylan’s Petition.”); <i>id.</i> , n. 5 (“[I]f the Board decides to construe ‘method of treating’ or ‘tertiary dose’ in this IPR, it should do so consistently with the constructions Regeneron has proposed in its contemporaneously filed Response in IPR2021-00881 relating to the ’338 Patent, since the ’069 Patent was filed as a continuation from the ’338 Patent.”) (citing <i>Samsung Elecs. Co. v. Elm 3DS Innovations, LLC</i> , 925 F.3d 1373, 1378 (Fed. Cir. 2019)).

Dated: March 3, 2022

Respectfully Submitted,

/s/ Deborah E. Fishman

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## **CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned Certifies that on March 3, 2022, a true and entire copy of this **RESPONSE TO PETITIONER'S IDENTIFICATION OF STATEMENTS SUPPORTED BY OBJECTED TO REFERENCES IN PATENT OWNER RESPONSES** was served via e-mail to the Petitioner at the following email addresses:

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