UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

V.

REGENERON PHARMACEUTICALS, INC., Patent Owner

Case IPR2021-00881¹ Patent No. 9,254,338 B2

PATENT OWNER'S SUR-REPLY



 $^{^{1}}$ IPR2022-00258 and IPR2022-00298 have been joined with this proceeding.

Table of Contents

TAB	LE OF	EXH	IBITSiii			
I.	INTE	INTRODUCTION1				
II.	THE	THE POSA1				
III.	CLAIM CONSTRUCTION					
	A.	Petitioner Fails to Address the Consequences of a Limiting Preamble				
	B. Treatment Requires a High Level of Efficacy		ment Requires a High Level of Efficacy			
		1.	The Intrinsic Record Supports A High Level of Efficacy4			
		2.	A High Level of Efficacy Is Not Uncertain Across Angiogenic Eye Disorders			
	C.	"Initi	al Dose," Secondary Dose(s)" and Tertiary Dose(s)"12			
IV.	GROUNDS 1, 3-5: PETITIONER FAILS TO DEMONSTRATE THAT "VEGF TRAP-EYE" WAS KNOWN IN THE ART TO CORRESPOND TO SEQ ID NO:1 AND/OR SEQ ID NO:2					
	A.	Petitioner Improperly Uses Inherency to Backfill an Incomplete Description of VEGF Trap-Eye in the Prior Art14				
		1.	Petitioner's Cases Do Not Support Its Use of Inherency16			
		2.	VEGF Trap-Eye's Sequence Was Not Publicly Accessible18			
	B.	Petitioner Has Failed to Show That the Sequences of VEGF Trap- Eye Are Necessarily Present in the Ground 1, 3-5 References19				
		1.	The "Same Molecular Structure" Does Not Necessarily Mean the Same Sequence			
		2.	The POSA Would Understand That "VEGF Trap-Eye" Could Encompass a Genus of Proteins21			



		3. Inconsistent Reporting of Molecular Weight Sows Doubt, Not Clarity	.24
		4. PO Did Not Characterize VEGF Trap-Eye and Aflibercept as the Same Agent	.24
V.		UND 2: ADIS DOES NOT ANTICIPATE THE LLENGED CLAIMS	.25
VI.		UND 1-5: PETITIONER FAILS TO ESTABLISH THAT ITS ERENCES DISCLOSE A "METHOD FOR TREATING"	.26
	A.	Knowledge of the "VEGF Trap-Eye" Amino Acid Sequence Will Not Necessarily Result in Treatment	.26
	B.	Administration of "VEGF Trap-Eye" Using the Disclosed Dosing Regimen Will Not Necessarily Result in Treatment	.28
	C.	Petitioner's References Do Not Disclose a Recognized Utility	.28
VII.	ANY	UND 6: PETITIONER FAILS TO DEMONSTRATE THAT CHALLENGED CLAIM IS OBVIOUS BASED ON DIXON NE OR IN COMBINATION WITH DIX OR THE '758	
	PATE	ENT	.30
VIII.		ECTIVE EVIDENCE CONFIRMS THE -OBVIOUSNESS OF THE CLAIMED DOSING REGIMEN	.33
	A.	Petitioner Ignores the Failure of Others and That Eylea Unexpectedly Satisfied a Long-Felt Need	.33
	B.	Eylea Is a Commercial Success	.34
IX.	CON	CLUSION	.37



TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
Abbott Lab'ys v. Geneva Pharms., Inc., 182 F.3d 1315 (Fed. Cir. 1999)	17
Amgen, Inc. v. Alexion Pharms., IPR2019-00741, Paper 15 (PTAB Aug. 30, 2019)	15, 16, 18
AstraZeneca LP v. Apotex, Inc., 633 F.3d 1042 (Fed. Cir. 2010)	25
Atlanta Attachment Co. v. Leggett & Platt, Inc., 516 F.3d 1361 (Fed. Cir. 2008)	29
Bayer Cropscience LP v. Syngenta Ltd., IPR2017-01332, Paper 15 (PTAB Apr. 2, 2018)	passim
Bettcher Indus., Inc. v. Bunzl USA, Inc., 661 F.3d 629 (Fed. Cir. 2011)	14, 17, 19
Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp., 320 F.3d 1339 (Fed. Cir. 2003)	32
Budde v. Harley-Davidson, Inc., 250 F.3d 1369 (Fed. Cir. 2001)	9
Celltrion, Inc. v. Genentech, Inc., IPR2016-01667, Paper 15 (PTAB Mar. 2, 2017) (Franklin, J.) (reh'g denied)	20
Chemours Co. FC, LLC v. Daikin Indus., Ltd., 4 F.4th 1370 (Fed. Cir. 2021)	33
Concordia Pharms., Inc. v. Method Pharms., LLC, No. 3:14-cv-00016-GEC, D.I. 219 (W.D. Va. Apr. 13, 2016)	35
Cont'l Can Co. USA, Inc. v. Monsanto Co., 948 F.2d 1264 (Fed. Cir. 1991)	35



Crocs, Inc. v. Int'l Trade Comm'n, 598 F.3d 1294 (Fed. Cir. 2010)
Endo Pharms. Sols., Inc. v. CustoPharm Inc., 894 F.3d 1374 (Fed. Cir. 2018)
Ex Parte Urban Weber, 2021 WL 4319420 (PTAB Sept. 21, 2021)17
Gilead Scis., Inc. v. U.S., IPR2019-01455, Paper 16 (PTAB Feb. 5, 2020)28
Helsinn Healthcare S.A. v. Dr. Reddy's Lab'ys, Ltd., No. 14-4274 (SRC), 2018 WL 623642 (D.N.J. Jan. 30, 2018)29
Hoffmann-La Roche Inc. v. Apotex Inc., 748 F.3d 1326 (Fed. Cir. 2014)34
In re Baxter Travenol Labs., 952 F.2d 388 (Fed. Cir. 1991)
<i>In re Donohue</i> , 766 F.2d 531 (Fed. Cir. 1985)
<i>In re Oelrich</i> , 666 F.2d 578 (C.C.P.A. 1981)25, 27
<i>In re Omeprazole Pat. Litig.</i> , 483 F.3d 1364 (Fed. Cir. 2007)
Janssen Pharms., Inc. v. Teva Pharms. USA, Inc., 2021 WL 5323737 (D.N.J. Nov. 16, 2021)
Multiform Dessicants, Inc. v. Medzam, Ltd., 133 F.3d 1473 (Fed. Cir. 1998)
Nature Simulation Sys. Inc. v. Autodesk, Inc., 23 F.4th 1334 (Fed. Cir. 2022)
Nevro Corp. v. Bos. Sci. Corp., 955 F 3d 35 (Fed. Cir. 2020)



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

