

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GRÜNENTHAL GMBH,

Petitioner

v.

ANTECIP BIOVENTURES II LLC,

Patent Owner.

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PGR2019-00028  
U.S. Patent No. 10,052,338

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**PETITIONER'S REPLY**

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## **I. Person of Ordinary Skill in the Art**

Patent Owner argues that Petitioner’s definition of the person of ordinary skill in the art (POSA) is incorrect because it includes experience and education in clinical psychology. While Petitioner maintains that its definition is correct, the differences between the two definitions have no impact on the asserted grounds.

## **II. Claim Construction**

### **A. The Preambles Are Not Limiting**

Patent Owner is incorrect that the preambles of claims 1 and 17 are limiting. As a general rule a preamble does not limit the claims. *Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1346 (Fed. Cir. 2002). The exception is where the preamble “recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (internal quotation marks omitted). In method claims, statements of intended result or purpose in a preamble are generally not limiting where the “method [is] performed in the same way regardless whether or not the [intended result actually ensues] . . . .” *Takeda Pharm. Co. Ltd. v. Actavis Labs. FL, Inc.*, No. 15-451-RGA, 2016 WL 3193188, at \*7 (D. Del. June 6, 2016) (citing *Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc.*, 246 F.3d 1368, 1375 (Fed. Cir. 2001)). Here, the steps of the claimed methods are performed in exactly the same way regardless of whether the allodynia or autonomic motor change is in fact “treated.” The steps are also

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