

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GNOSIS S.p.A., GNOSIS BIORESEARCH S.A.  
and GNOSIS U.S.A., INC.,  
Petitioners,

v.

SOUTH ALABAMA MEDICAL SCIENCE FOUNDATION and  
MERCK & CIE,  
Patent Owners.

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Case IPR2013-00116 (Patent 5,997,915)  
Case IPR2013-00117 (Patent 6,011,040)  
Case IPR2013-00118 (Patent 6,673,381)  
Case IPR2013-00119 (Patent 7,172,778)

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RECORD OF ORAL HEARING

Before: JACQUELINE WRIGHT BONILLA, SCOTT E. KAMHOLZ,  
and SHERIDAN K. SNEDDEN, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

JOSEPH E. CWIK, ESQ.  
Husch Blackwell  
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and

Case Nos. IPR2013-00116, IPR2013-00117,  
IPR2013-00118, and IPR2013-00119

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6 ON BEHALF OF PATENT OWNER:

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14

15 The above-entitled matter came on for hearing on Thursday,  
16 March 20, 2014, commencing at 10:02 a.m., at the U.S. Patent and  
17 Trademark Office, 600 Dulany Street, Alexandria, Virginia.  
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21 P R O C E E D I N G S

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23 JUDGE KAMHOLZ: Good morning. We will hear  
24 argument this morning in Case Numbers IPR2013-00116, 118, 119,  
25 Gnosis versus South Alabama Medical Science Foundation. We will  
26 hear argument this afternoon for Case Number IPR2013-00117, Gnosis  
27 versus Merck. Counsels for the parties please introduce yourself,  
28 starting with petitioner?

29 MR. CWIK: Yes, Your Honor. My name is Joe Cwik, and  
30 I'm here on behalf of petitioners. With me is my co-counsel Jonathan  
31 Krit. Jonathan Krit has been designated lead counsel as of record.

32 JUDGE KAMHOLZ: Good morning.

1 MR. PARKER: Good morning, Your Honors. My name is  
2 Thomas Parker. I'll be speaking on behalf of the University of South  
3 Alabama, and with me is my associate colleague, Andrew Sterling, who  
4 will be assisting with the presentation.

5 JUDGE KAMHOLZ: Who is here for Merck?

6 MR. PARKER: I'll also be here for Merck as well for the  
7 afternoon session, and with that, Your Honor, I just wanted to raise one  
8 housekeeping item, and I spoke with counsel as well. Can we have one  
9 single transcript and possibly captioned with all four IPRs? Because  
10 what that will do is in the afternoon, we may be referring back to  
11 statements that were made in the morning session, and we can just  
12 simply refer back to the morning session, and if we have it in the same  
13 transcript, it may be a bit more clearer to do that as oppose to two  
14 certain transcripts, if that's okay with the panel.

15 JUDGE SNEDDEN: Is that acceptable to you?

16 MR. CWIK: Your Honor, that's fine, if we have one  
17 transcript. I think that will eliminate some duplication when we're  
18 talking in the afternoon. I mean, I think it would not be proper to use  
19 the afternoon session to make arguments about the morning patents. I  
20 don't think that's the intent of it, but I think a single transcript is  
21 acceptable to us.

22 JUDGE KAMHOLZ: Well, to the extent that you've briefed  
23 it, any arguments you make at any time in any session are applicable to  
24 all cases, but where argument is focused on one case or fewer than all  
25 cases, it will perhaps help if you indicate that when making argument.

1           With that in mind, I think that's fine with us to have a single  
2 transcript.

3           MR. PARKER: Thank you.

4           MR. CWIK: Thank you, Your Honor.

5           JUDGE KAMHOLZ: Thank you. Per our order dated  
6 March 7, 2014, each side will have a total of two hours to argue, one  
7 hour in the morning, one hour in the afternoon. The petitioner will go  
8 first for each session and should begin by indicating how much time, if  
9 any, will be reserved for rebuttal. I'll remind the parties that the  
10 petitioner bears the burden of proving any proposition of  
11 unpatentability by a preponderance of the evidence.

12           Although motions to seal have been granted and others are  
13 pending in these cases, this hearing is public. The final reminder, when  
14 referring to demonstratives, please mention the slide number you are  
15 referring to so that it's clear in the record.

16           Are there any questions?

17           MR. PARKER: No, Your Honors.

18           MR. CWIK: Your Honor, regarding the slides, I do have  
19 hard copies for the judges, if they want them at this time.

20           JUDGE KAMHOLZ: Yes, please.

21           MR. CWIK: May I approach the Bench?

22           JUDGE KAMHOLZ: Of course.

23           MR. PARKER: Your Honors, may I approach the Bench,  
24 please? Would you like your copies as well?

25           JUDGE KAMHOLZ: Yes, please.

Case Nos. IPR2013-00116, IPR2013-00117,  
IPR2013-00118, and IPR2013-00119

1 MR. PARKER: Your Honors, we only made one copy to  
2 cover all three of the IPRs relating to -- I'll refer to the same set of  
3 patents if that's okay.

4 JUDGE KAMHOLZ: Parties, are there any particular set of  
5 slides we should we referring to?

6 MR. CWIK: Your Honor, I expect I will primarily be  
7 relying on the 116 case, the '915 patent case. The slides are very  
8 similar for most of the slides, except for some of the claim charts in the  
9 beginning of the slide, and if we get that far -- I'm not sure we will get  
10 that far, but if we do, I'll make that indication. I'll even have to change  
11 the slides on the computer.

12 So if we can start with the '915 in the 116 case is the one I  
13 plan on starting with.

14 JUDGE KAMHOLZ: You may begin when ready.

15 MR. CWIK: Good morning, Your Honors. My name is Joe  
16 Cwik, and for the record I'm here on behalf of the petitioners. Your  
17 Honors, I would like to give you a brief outline of what petitioners plan  
18 on doing with their oral argument today. I am going to start with 20  
19 minutes to discuss our prima facie case with respect to the '915, the  
20 '381, '778 patents. The parties have collectively called those patents the  
21 Bailey patents.

22 Patent owners will then have their one hour of response time,  
23 and petitioners will reserve 40 minutes for rebuttal, and the reason we  
24 broke out the time that way is, as you can see in the briefing so far,

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