

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMNEAL PHARMACEUTICALS, LLC,  
Petitioner,

v.

SUPERNUS PHARMACEUTICALS, INC.  
Patent Owner.

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Case Numbers IPR2013-00368, IPR2013-00371 and IPR2013-00372  
Patent Numbers 8,206,740, 8,394,405 and 8,394,406

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Held: August 12, 2014

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Before: LORA M. GREEN, SCOTT E. KAMHOLZ, and  
GEORGIANNA WITT BRADEN, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

H. KEETO SABHARWAL, ESQUIRE  
PAUL A. AINSWORTH, ESQUIRE  
Sterne Kessler Goldstein Fox  
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1 ON BEHALF OF PATENT OWNER:

2 GERALD J. FLATTMAN JR., ESQUIRE

3 GREGORY A. MORRIS, ESQUIRE

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7 -and-

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14  
15 The above-entitled matter came on for hearing on Tuesday,  
16 August 12, 2014, commencing at 1:00 p.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: Can everyone in the room hear Judge  
24 Braden? Judge Braden, would you speak again, please?

25 JUDGE BRADEN: Yes, I can. Can everyone in the room  
26 hear me?

27 JUDGE KAMHOLZ: I think that will suffice.

28 Good afternoon. We will hear argument now in Case  
29 Numbers IPR2013-00368, 00371, 00372, Amneal Pharmaceuticals,  
30 LLC, versus Supernus Pharmaceuticals, Incorporated. Counsel for the

1 parties, would you please introduce yourselves, starting with the  
2 Petitioner?

3 MR. SABHARWAL: Good afternoon, Your Honors. On  
4 behalf of Amneal Pharmaceuticals, Keeto Sabharwal of the law firm  
5 Sterne, Kessler, Goldstein and Fox.

6 MR. AINSWORTH: Good afternoon, Your Honor, Paul  
7 Ainsworth, also with Sterne, Kessler, Goldstein and Fox.

8 JUDGE KAMHOLZ: And Patent Owner?

9 MR. FLATTMANN: Yes, Your Honor. I'm Gerald  
10 Flattmann of the law firm of Paul Hastings for the patent holder,  
11 Supernus.

12 MR. MORRIS: I'm Greg Morris, Your Honor, from the law  
13 firm of Paul Hastings, also for Supernus.

14 MR. MAEBIUS: Also Steve Maebius of Foley and Lardner  
15 on behalf of Supernus.

16 JUDGE KAMHOLZ: Welcome, everyone, to the Board.

17 Per our order dated July 18, 204, each side will have one  
18 hour to argue during this hearing. The Petitioner will argue first and  
19 present all of its arguments concerning all cases and may reserve  
20 rebuttal time. You should begin your presentation by indicating how  
21 much time you will reserve, if any. The Patent Owner may not  
22 reserve rebuttal time.

23 I will remind the parties that the Petitioner bears the burden  
24 of proving any proposition of unpatentability by a preponderance of  
25 the evidence. I will also remind the parties that this hearing is open to

1 the public and a full transcript of everything that is said will become  
2 part of the public record.

3 Please bear in mind that the third member of this panel,  
4 Judge Braden, is attending this hearing by telephone from our office  
5 in Dallas. Please remember also to mention by number every slide as  
6 you refer to it. This is especially important to ensure that Judge  
7 Braden can follow the proceedings.

8 With that, I would like to invite Petitioner to begin.

9 MR. SABHARWAL: Thank you, Your Honors. Your  
10 Honor, just a couple of preliminary matters. First of all can you hear  
11 me? Does this work. Does that work? Hello?

12 **(Discussion off the record.)**

13 MR. SABHARWAL: I can speak loud.

14 JUDGE KAMHOLZ: Why don't you do that. Someone is  
15 coming, and we'll deal with it.

16 MR. SABHARWAL: Great, thank you. Just a couple  
17 preliminary matters, Your Honors. First of all, with respect to the  
18 time allocation, with the Board's permission, we would like to allocate  
19 40 minutes for our opening presentation and then 20 minutes for  
20 rebuttal.

21 Also, we have hard copies of our demonstratives, if the  
22 Board would like that.

23 JUDGE KAMHOLZ: Yes, please.

24 MR. SABHARWAL: Could you hand those out, please.

25 Excuse me.

1                   **(Discussion off the record.)**

2                   JUDGE KAMHOLZ: Please proceed.

3                   MR. SABHARWAL: Thank you. One other thing, Your  
4 Honors, in terms of the allocation, I will be addressing the prima facie  
5 and secondary consideration issues in part of our opening, and Mr.  
6 Ainsworth will be discussing the alternative arguments, the  
7 incorporation by reference, the antedation issue and CREATE Act  
8 issue.

9                   JUDGE KAMHOLZ: Thank you. Please make sure that  
10 you speak up and into the microphone so Judge Braden can hear.

11                  MR. SABHARWAL: All right. If for any reason you can't  
12 hear me, please let me know.

13                  JUDGE BRADEN: Thank you. It would be nice.

14                  MR. SABHARWAL: Sure. Your Honors, on December 17  
15 of 2013, this Board instituted the foregoing IPRs based upon the '932  
16 Ashley reference as well as the Sheth reference.

17                  In the ensuing eight months, Petitioner's case has been  
18 strengthened based upon at least three principal reasons: Number 1,  
19 the express disclosures of the '932 reference and the Sheth reference.  
20 Your Honors, it doesn't matter what Mr. Flattmann or I say. The  
21 references say what they say, and we believe that they strongly  
22 demonstrate unpatentability of the alleged invention in this case.

23                  Secondly, based upon deposition testimony as well as the  
24 pleadings and other exhibits, the Patent Owner, Supernus, has failed  
25 to demonstrate that any of the secondary considerations overcome our

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