

No. 15-

IN THE
Supreme Court of the United States

CUBIST PHARMACEUTICALS, INC.,
Petitioner,

v.

HOSPIRA, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), this Court recognized the relevance of “objective indicia” of nonobviousness (also known as “secondary considerations”)—including the long-felt need for the patented invention, the failure of others to arrive at the invention, and the invention’s subsequent commercial success—in determining whether a patent’s claims were obvious to a person of ordinary skill in the art. In this case, the district court created, and the Federal Circuit affirmed, two categorical limitations on the consideration of objective indicia of nonobviousness that exist nowhere in the Patent Act or this Court’s jurisprudence.

The questions presented are:

1. Whether a court may categorically disregard objective indicia of a patent’s nonobviousness merely because the considerations apply to one commercial embodiment of a patented invention, rather than all embodiments.

2. Whether a court may categorically disregard objective evidence of a long-felt need for a patented invention merely because the need is not expressly recited in the patent claims.

(i)

RULE 29.6 DISCLOSURE STATEMENT

Cubist Pharmaceuticals LLC (formerly known as Cubist Pharmaceuticals, Inc.) is a wholly-owned subsidiary of Merck & Co., Inc. Merck & Co., Inc. is not owned by any parent corporation and, to its knowledge, no other publicly held corporation owns 10% or more of its stock.

(ii)

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