

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUPIN LIMITED,
Petitioner,

V.

VERTEX PHARMACEUTICALS INCORPORATED,
Patent Owner.

Case IPR2016-00558
Patent 6,436,989 B1

Record of Oral Hearing
Held: Wednesday, April 5, 2017

BEFORE KRISTINA M. KALAN, ROBERT A. POLLOCK, and
MICHELLE N. ANKENBRAND, Administrative Patent Judges

The above-entitled matter came on for hearing on Wednesday, April 5,
2017, commencing at 9:31 a.m. at the U.S. Patent and Trademark Office,
600 Dulany Street, Alexandria, Virginia.

Case IPR2016-00558
Patent 6,436,989 B1

APPEARANCES

ON BEHALF OF THE PETITIONER:

STEPHEN AUTEN, ESQUIRE
JANE S. BERMAN, ESQUIRE
TAFT, STETTINIUS & HOLLISTER, LLP
111 East Wacker Drive
Suite 2800
Chicago, Illinois 606061
(312) 527-4000

ON BEHALF OF THE PATENT OWNER:

LISA M. FERRI, ESQUIRE
SCOTT A. McMURRY, ESQUIRE
BRIAN W. NOLAN, ESQUIRE
MAYER BROWN, LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 506-2340

1 PROCEEDINGS

2 JUDGE SNEDDEN: Good morning. I'm Judge
3 Snedden, and I have with me on the panel Judge Green
4 and Pollock, and we are here for the final -- the
5 oral hearing in IPR201600558. I'd like to start with
6 appearances. We'll start with Petitioner. Please
7 stand, introduce yourself, and who you have with you
8 today.

9 MR. AUTEN: Morning, Your Honor. I'm Steve
10 Auten on behalf of Petitioner Lupin Limited.

11 JUDGE SNEDDEN: Thank you. And who did you
12 bring with you today?

13 MR. AUTEN: I'm sorry, I didn't hear that
14 part. That's my colleague, Jane Berman.

15 JUDGE SNEDDEN: Okay, welcome. And Patent
16 Owner?

17 MS. FERRI: Good morning, Your Honor. Lisa
18 Ferri from Mayer Brown, and I'm here on behalf of the
19 Patent Owner, Vertex Pharmaceuticals. I have with me
20 Brian Nolan, also Mayer Brown, and Scott McMurry,
21 also from Mayer Brown.

22 JUDGE SNEDDEN: Okay, welcome. Okay. Each

1 party, 45 minutes. We'll begin with Petitioner. You
2 can reserve part of your time for rebuttal. Would
3 you be reserving time today?

4 MR. AUTEN: I'd like to reserve four minutes
5 for rebuttal, Your Honor.

6 JUDGE SNEDDEN: Four minutes?

7 MR. AUTEN: Correct.

8 JUDGE SNEDDEN: Okay. All right. With that,
9 we'll begin. When you're ready, please stand and
10 we'll begin.

11 MR. AUTEN: Sure thing. May it please the
12 Board, I'm Stephen Auten on behalf of Petitioner
13 Lupin Limited. And we're here to talk about
14 fosamprenavir and the claims of the '989 patent and
15 whether it was obvious to make a prodrug of the
16 amprenavir based on a few key certain facts. And
17 that is, one, it would have been obvious to use the
18 second most common pharmaceutical salt that had been
19 used for four decades prior to the relevant date, and
20 it would have been obvious to use the number one,
21 most common, prodrug moiety for improving solubility
22 and thus bioavailability for a prodrug of that type

1 when the prior art completely predicted that such a
2 drug would have the resistance profile and
3 pharmacokinetic profile of amprenavir.

4 So you've seen a lot of content in the papers
5 dedicated to Grobelny and the dog data and that's all
6 a red herring argument. That's all trying to
7 distract you because what a person of ordinary skill
8 in the art would have expected would have been to
9 have the pharmacokinetic profile of amprenavir,
10 because that's the prodrug that's being made of that
11 particular drug. It would not be expected to have a
12 pharmacokinetic profile of a completely different
13 drug in Grobelny's patent application.

14 And even if you accept that argument as true,
15 we'll show you why even Grobelny would have predicted
16 a successful prodrug made of amprenavir. So turning
17 to our deck, starting with slide 3 -- we just,
18 obviously laid the foundation for amprenavir being
19 the obvious target and being in the prior art as of
20 1994.

21 Slide 4 actually lays the foundation for what
22 is key for your decision today; and that is knowing

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.