

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LABORATOIRE FRANCAIS DU FRACTIONNEMENT ET DES
BIOTECHNOLOGIES S.A.,
Petitioner,

v.

NOVO NORDISK HEALTHCARE AG,
Patent Owner.

IPR2017-00028
Patent 9,102,762 B2

Record of Supplemental Oral Hearing
Held: February 6, 2019

Before ERICA A. FRANKLIN, SUSAN L. C. MITCHELL, and
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

IPR2017-00028
Patent 9,102,762 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Wednesday, February 6, 2019, commencing at 1:00 p.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 P R O C E E D I N G S

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3 (1:00 p.m.)

4 JUDGE PAULRAJ: Good afternoon. This is the supplemental oral
5 hearing for IPR2017-00028. I am Judge Paulraj and to my left is Judge
6 Mitchell and to my right is Judge Franklin.

7 Let's start with the appearances, Petitioner's counsel first and then
8 Patent Owner's counsel.

9 MR. QUILLIN: Good day, Your Honor. I am George Quillin from
10 Foley & Lardner representing Petitioner LFB, and with me at counsel table
11 is my colleague Jason Mock who will be presenting most of the
12 technological arguments.

13 JUDGE PAULRAJ: All right. Thank you, Mr. Quillin, Mr. Mock.
14 Patent Owner's counsel?

15 MR. OELKE: Good afternoon, Your Honor. Jeff Oelke from
16 Fenwick & West on behalf of the Patent Owner, Novo Nordisk Healthcare
17 AG, and with me is my colleague Catherine McCord, whose pro hac is
18 pending for this proceeding.

19 JUDGE PAULRAJ: I did want to actually address that as a
20 preliminary matter. So we are granting Ms. McCord's pro hac vice and there
21 will be an order issued. So to the extent that she wants to participate in this
22 hearing consider her admission granted.

23 MR. OELKE: Thank you, Your Honor, although I will be
24 presenting.

1 JUDGE PAULRAJ: All right. Thank you, Mr. Oelke. As per the
2 hearing order that we issued last week, each side will have 30 minutes to
3 present arguments limited to the scope of this hearing -- proceeding.

4 So I do want to emphasize again that as we did in prior orders that
5 this oral hearing will not be used as an opportunity to re-argue on
6 patentability grounds that were decided in our final written decision from
7 April.

8 So with that let's start with Petitioner's counsel. Actually, are there
9 any other preliminary matters we need to address before we start the
10 arguments?

11 MR. QUILLIN: Aside from reserving rebuttal time if you want to
12 do that, Your Honor.

13 JUDGE PAULRAJ: Okay.

14 MR. QUILLIN: There is nothing that -- I don't believe there is
15 anything else from Petitioner's side.

16 JUDGE PAULRAJ: Okay.

17 MR. OELKE: Your Honor, we did file a Motion to Exclude some of
18 the exhibits they filed in their supplemental reply.

19 JUDGE PAULRAJ: Okay. And we will consider those in due
20 course. We are not going to be addressing that at this point.

21 MR. OELKE: Okay. Thank you, Your Honor.

22 JUDGE PAULRAJ: All right. Mr. Mock, if you are ready --
23 whenever you are ready.

24 MR. QUILLIN: George Quillin, Your Honor, just some preliminary
25 remarks. We would like to reserve 15 minutes of our time for rebuttal.

26 JUDGE PAULRAJ: Okay.

1 MR. QUILLIN: So just the big picture, we have asserted that Novo
2 is not entitled to the benefit of its priority applications. We say that they
3 waived that in their initial -- the first Patent Owner response by not
4 addressing it, even in this supplement hearing, although they did address it,
5 we say there is no evidence.

6 It is their burden, they didn't carry it, they are not entitled. That is
7 important for a couple of reasons. One, it bears on the state of the art. It
8 goes to the Graham factors for example, the scope and content of the prior
9 art, differences between the art, and the claim did mention it.

10 It also goes, Your Honor, to the credibility of the Patent Owner's
11 expert witnesses who don't address the state of the art after their asserted
12 benefit date, so they are in that sense blind to a whole year's worth of
13 progress in the art.

14 Second, big picture, the claims, as you know, are directed to a
15 method of filtering a liquid composition. Of course there is no claim to the
16 filter itself -- that's old, that's in the art. There is also no claim to the liquid
17 composition itself -- that's old, that's in the art.

18 So the claims, big picture, are to run a known liquid through a
19 known filter and what do you get? What happens when you run a liquid
20 through a filter? The big stuff is retained and the small stuff goes through.

21 Here are the big stuff, the virus is retained -- the small stuff, the
22 protein goes through. That's what you expect when you run a liquid through
23 a filter. So in our view it's very straightforward and I will turn it over to Mr.
24 Mock to address our specific arguments on the technology.

25 JUDGE PAULRAJ: All right. Thank you.

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