UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLATWING PHARMACEUTICALS, LLC and MYLAN PHARMACEUTICALS INC., Petitioners,

V.

ANACOR PHAMACEUTICALS, INC., Patent Owner.

Case No. IPR2018-00170¹ U.S. Patent No. 9,566,290

PATENT OWNER'S SURREPLY

¹ Case No. IPR2018-01360 has been joined with this proceeding



TABLE OF CONTENTS

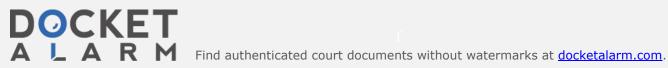
PAT	ENT C)WNE	R'S SURREPLY	5	
ARG	UME	NT		6	
I.	What Is Actually Not In Dispute				
II.	Petitioners Fail to Rebut Anacor's Arguments				
	A.	Petitioners Fail to Rebut Anacor's Evidence of Teaching Away			
		1.	Petitioners Do Not Dispute Dr. Lane's Analysis that Samour in Combination with the Cited Art and Evidence of Record as a Whole Teaches Away	9	
		2.	The Cited Art Teaches Away from 5% Even Under Petitioners' Incorrect Legal Standard	10	
		3.	Petitioners' Pivot to Overlapping Ranges in the Cited Art Does Not Rebut Anacor's Evidence of Teaching Away	12	
	B.	Boron-Containing Compounds Was Not Routine			
III.	Petitioners' Criticisms of Anacor's Experts Are Irrelevant			16	
	A.	A. Petitioners Mischaracterize Dr. Lane's Opinions			
	B. Dr. Reider is Qualified to Opine on Aspects of Transungual Drug Delivery That Require Expertise in Chemistry1			18	
IV.	Dr. Kahl's Rebuttal Opinions Regarding Brehove Are Conclusory and Not Entitled to Any Weight			19	
V.	Dr. Murthy's Reliance on Anacor's Post-Priority Dose-Ranging Studies Should be Rejected as Pure Hindsight				
CON	CLUS	ION		24	



TABLE OF AUTHORITIES

Cases:

Alcon Research, Ltd. v. Apotex Inc., 687 F.3d 1362 (Fed. Cir. 2012)
Allergan, Inc. v. Sandoz Inc., 796 F.3d 1293 (Fed. Cir. 2015)1
Cardiac Pacemakers, Inc. v. St. Jude Med. Inc., 381 F.3d 1371 (Fed. Cir. 2004)
Dura Auto. Sys. of Ind., Inc. v. CTS Corp., 285 F.3d 609 (7th Cir. 2002)
Galderma Labs., L.P. v. Tolmar, Inc., 737 F.3d 731 (Fed. Cir. 2013)
Genetics Inst., LLC v. Novartis Vaccines & Diagnostics, Inc., 655 F.3d 1291 (Fed. Cir. 2011)
Honeywell Int'l Inc. v. Mexichem Amanco Holding S.A., 865 F.3d 1348 (Fed. Cir. 2017)22
In re Cyclobenzaprine Hydrochloride Extended-Release Patent Litig., 676 F.3d 1063 (Fed. Cir. 2012)22
In re Peterson, 315 F.3d 1325 (Fed. Cir. 2003)
Leo Pharm. Prods., Ltd. v. Rea, 726 F.3d 1346 (Fed. Cir. 2013)
Millennium Pharms., Inc. v. Sandoz, Inc. 862 F.3d 1356 (Fed. Cir. 2017)
PGS Geophysical AS v. Iancu, 891 F.3d 1354 (Fed. Cir. 2018)10
Santarus, Inc. v. Par Pharm. Inc., 694 F.3d 1344 (Fed. Cir. 2012)10
SkinMedica, Inc. v. Histogen Inc., 727 F.3d 1187 (Fed. Cir. 2017)20



Rules:

Fed. R.	Evid. 703	10
Fed. R.	Evid. 802	20



There are two principal reasons why claims 2, 5, 6, 8, 11, and 12 of U.S.

Patent No. 9,566,290 ("the '290 patent," Ex. 1001) are patentable over the art cited by FlatWing and Mylan. *First*, as explained in Anacor's Patent Owner's Response, a person of ordinary skill in the art ("POSA") in 2005 would have used a concentration of tavaborole higher than the 5% w/w recited in claims 2, 5, 6, 8, 11, and 12 because the cited art teaches away from 5%. A POSA would have also expected tavaborole to have high keratin-binding affinity, a fact which would have led a POSA to a higher concentration in order to overcome the notoriously difficult challenge of delivering drugs through the human nail plate.

Second, Anacor's evidence establishes that a POSA in 2005 would not have arrived at the recited concentration through routine experimentation, including "routine" dose-ranging studies, because the reactivity of boron-containing compounds such as a tavaborole would have been expected to render their formulation highly unpredictable—and thus far from routine. Indeed, the record in this case contains only two pre-priority formulations of boron-containing active ingredients—the formulation of a bortezomib prodrug in VELCADE® and Brehove's formulation of the dioxaborinanes of Biobor JF®—and a POSA would have known both to suffer from significant stability problems.

Petitioners' reply fails to rebut Anacor's arguments and evidence.

Petitioners first erroneously suggest that the previous Board and Federal Circuit



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