

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., DR. REDDY'S
LABORATORIES, INC., DR. REDDY'S LABORATORIES, LTD., and
SUN PHARMACEUTICALS INDUSTRIES LTD.,
Petitioner,

v.

MERCK SHARP & DOHME CORP.,
Patent Owner.

IPR2020-00040
Patent 7,326,708 B2

Record of Oral Hearing
Hearing Held: February 11, 2021

Before SHERIDAN K. SNEDDEN, ROBERT A. POLLOCK and
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

IPR2020-00040
Patent 7,326,708 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER, MYLAN PHARMACEUTICALS,
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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Thursday, February 11, 2021, commencing at 11:00 a.m., EDT, by video/by telephone.

1 PROCEEDINGS

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3 JUDGE MAJORS: We're here today for oral argument in
4 IPR 2020-00040 and the related and joined cases, the 1060 and
5 the 1072 cases. We've already talked through with counsel for
6 Petitioner, Mr. Malik, and Patent Owner, Mr. Fisher and Mr.
7 Mahaffy. Do we have counsel on for the joined parties, Dr.
8 Reddy's and Sun?

9 MR. FAEGENBURG: Judge, Russ Faegenburg for Dr.
10 Reddy's.

11 JUDGE MAJORS: Thank you, Mr. Faegenburg. Anyone
12 for the Sun parties? Does anyone on Petitioner's part, do you
13 know if they were intending to call in or listen in? I know that
14 we're also supposed to be having an open line for some interested
15 members of the public. I don't know if they're listening in on
16 that line and not -- since they're not going to be presenting today
17 I just wondered if that's what may be happening.

18 MR. FAEGENBURG: I provided just a few moments ago
19 Sun's counsel with the link I had and with the public audio line
20 but I don't know if she's joining.

21 MR. MALIK: And Your Honor, Mylan hadn't
22 communicated with counsel for Sun either so I don't know one
23 way or the other either.

24 JUDGE MAJORS: Since we're going to have a lot of
25 people on line today, just to again a preliminary matter. When
26 someone is speaking of course try to unmute your line so we can

1 hear you and then for everyone else try to keep your line on mute
2 to avoid any ambient noise. That tends to help. We may, it's
3 possible given our experience over the last week that we may
4 have some technical issues at some point during today's oral
5 argument so if that happens just be patient and we'll try to circle
6 back and pick up where we left off. Hopefully it doesn't, but if
7 it does just sit tight and we'll move everybody back in.

8 Relatedly, if at any point the parties feel that this video
9 format is negatively impacting the ability for them to be heard
10 and to make their case, please let us know as well.
11 Unfortunately, under normal circumstances we'd want to have
12 you in person but these are not exactly normal times so thank
13 you again for your patience as the PTAB as well as everybody
14 else works through these circumstances. I understand that there's
15 a LEAP practitioner. Is that Mr. Mahaffy, you're going to be
16 presenting at least part of Patent Owner's case today?

17 MR. MAHAFFY: That's right, Your Honor.

18 JUDGE MAJORS: Hold on a second. Telling me to either
19 talk quieter or keep my audio down.

20 MS. FUNDAKOWSKI: I'm sorry, Your Honor. Can you
21 hear me?

22 JUDGE MAJORS: Yes.

23 MS. FUNDAKOWSKI: Yes. This is Clare Fundakowski on
24 behalf of Sun. I was in fact on the public line and of course
25 muted. I apologize for that, Your Honor.

26 JUDGE MAJORS: No, that's okay. I'm glad somebody's on

1 line for Sun. All right. So let me pick back up. So as I think
2 folks probably know, Patent Owner's going to get an additional
3 15 minutes of time for their arguments by Mr. Mahaffy. Mr.
4 Mahaffy, is there an issue or part of the case that you're going to
5 focus on or, just trying to figure out what might make sense in
6 terms of the overall process here?

7 MR. MAHAFFY: Yes, Your Honor. I'm going to discuss
8 some of the swear behind issues and some of the issues with
9 respect to dependent claims as well as some unexpected
10 properties. I think I'll let Mr. Fisher speak to this but I think our
11 idea was to let Mr. Fisher speak first and for me to take the
12 (indiscernible) at the end --

13 JUDGE MAJORS: Okay.

14 MR. MAHAFFY: -- of the presentation.

15 JUDGE MAJORS: Okay. That's fine with us. So as we set
16 forth in the oral argument order each side has an hour but as just
17 noted, Patent Owner's going to get an additional 15 minutes for
18 the presentation by Mr. Mahaffy. You can reserve up to 15
19 minutes of your time for rebuttal purposes. We'll start the
20 presentations. Petitioner will go first, then Patent Owner and
21 then you can reserve rebuttal time. We'll go back and forth with
22 that. One other quick note. If the parties could stay on at the
23 conclusion of the oral argument just to see if there's any
24 questions from the court reporter that can be cleared up that
25 would be much appreciated. We'll try to give you -- the panel
26 will try to give you advance warning when time is getting short

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