

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLAYBACK PHARMA LLC,
Petitioner,

v.

SUMITOMO DAINIPPON PHARMA CO., LTD.,
Patent Owner.

Case IPR2020-01053
U.S. Patent 9,815,827

PATENT OWNER'S NOTICE OF APPEAL

Pursuant to 35 U.S.C. §§ 141(c) and 142 and 37 C.F.R. § 90.2(a), Sumitomo Pharma Co., Ltd.¹ (“Patent Owner”) hereby respectfully appeals to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board’s (“Board’s”) Final Written Decision in Case No. IPR2020-01053, entered on January 20, 2022 (Paper 32) and the Board’s Decision on Rehearing entered on July 26, 2022 (Paper 35), as well as from all other underlying orders, decisions, rulings, and opinions that are adverse to Patent Owner. This appeal is timely under 35 U.S.C. § 142, 37 C.F.R. § 90.3, Federal Rule of Appellate Procedure 15(a)(1), and Federal Circuit Rule 15(a)(1).

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), the issues in Patent Owner’s appeal may include, but are not limited to:

- (1) The Board’s legally erroneous institution, followed by its *ultra vires* carrying on of a trial proceeding under a Section 112 theory that is not permitted in IPRs, which led to its legally erroneous shift to a basis for rejection in its final written decision that played no part in its institution decision;

¹ Patent Owner Sumitomo Dainippon Pharma Co., Ltd. changed its name to Sumitomo Pharma Co., Ltd. effective April 1, 2022.

- (2) the Board's determination of the unpatentability of claims 1-75 of U.S. Patent No. 9,815,827 over Saji, U.S. Patent No. 5,532,372; and
- (3) any and all findings or determinations supporting or related to the aforementioned issues, as well as other issues decided adversely to Patent Owner in any orders, decisions, rulings, or opinions.

Pursuant to 37 C.F.R. § 90.2(a) and 37 C.F.R. § 90.2(a)(1), Patent Owner is filing a copy of this Notice of Appeal with the Director, and a copy of the Notice of Appeal is being filed electronically with the Patent Trial and Appeal Board. In addition, pursuant to Federal Circuit Rule 15(a)(1) and 37 C.F.R. § 90.2(a)(2), a copy of this Notice of Appeal, along with the required docketing fees, is being electronically filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Date: September 26, 2022

/W. Chad Shear/
W. Chad Shear, Reg. No. 47,938

Attorney for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on September 26, 2022, a complete and entire copy of this Patent Owner's Notice of Appeal was provided via email to the Petitioner by serving the correspondence address of record as follows:

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