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HEALTH S.A.; AND NESTLÉ S.A.,
Petitioner,

v.

MEDY-TOX, INC.,
Patent Owner.

PGR2019-00062
Patent 10,143,728 B2

Record of Oral Hearing
Held: March 19, 2021

BEFORE: ZHENYU YANG, CHRISTOPHER G. PAULRAJ, and
TIMOTHY G. MAJORS, Administrative Patent Judges.

PGR2019-00062
Patent 10,143,728 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Friday, March 19, 2021, commencing at 1:02 p.m. EST, by video/by telephone.

1 (Proceedings begin at 1:02 p.m.)

2 JUDGE PAULRAJ: Good afternoon. This is the final oral hearing for
3 PGR2019-00062.

4 I'm Judge Paulraj, and also appearing by video today will be Judge
5 Majors and Judge Yang.

6 So let's go ahead and start with appearances first, starting with
7 petitioner's counsel and then patent owner's counsel.

8 MR. MAHONEY: Good afternoon.

9 I'm Joe Mahoney with the firm Mayer Brown representing petitioners,
10 and joined by -- joined on the phone by Erick Palmer, also of Mayer Brown,
11 on behalf of the petitioners.

12 JUDGE PAULRAJ: Thank you, Mr. Mahoney.

13 Will you be primarily arguing for petitioner during the hearing?

14 MR. MAHONEY: Yes.

15 JUDGE PAULRAJ: Excellent.

16 Who do we have on for patent owner?

17 MR. WONG: Good afternoon, Your Honors.

18 My name is Ha Kung Wong from Venable LLP. I'll be representing the
19 patent owners and arguing on behalf of the patent owners today.

20 JUDGE PAULRAJ: All right. Thank you, Mr. Wong.

21 So I just want to remind the parties that this will be a public hearing,
22 and I do believe that we have members of the public listening in on this
23 hearing.

24 I don't anticipate that any confidential information will need to be
25 discussed, but to the extent that confidential information will be discussed, I

1 would ask counsel to let me know before we get into anything confidential
2 so we can mute the public line.

3 As set forth in our hearing order, each side will have 60 minutes to
4 present their arguments.

5 I understand we are only dealing with patent owner's non-contingent
6 revised motion to amend in this case, but nonetheless, as petitioner has the
7 burden of proof for the unpatentability issues for the proposed substitute
8 claims, petitioner will go first and patent owner will respond.

9 Each side may reserve some amount of rebuttal or surrebuttal time for
10 their respective arguments, but no more than half the total time allocated for
11 each argument segment.

12 To the extent that there are any objections raised, I would ask that you
13 wait until the end of the other side's arguments to raise those objections.

14 Please don't interrupt counsel with objections in the middle of their
15 arguments.

16 Also, if you're not speaking, please make sure you mute your line so
17 that we don't have any feedback or background noise.

18 Before we proceed, are there any preliminary matters we need to
19 discuss?

20 MR. MAHONEY: No, Your Honor.

21 MR. WONG: No, Your Honor.

22 JUDGE PAULRAJ: Excellent. If not, then petitioner's counsel, Mr.
23 Mahoney, we're ready to proceed whenever you are.

24 MR. MAHONEY: Thank you.

25 If I may, I'd like to start with our slides.

1 JUDGE PAULRAJ: Okay. Before you get into your slides, could you
2 let me know how much time you'd like for rebuttal?

3 MR. MAHONEY: I would say 15 or 20 minutes, something like that.

4 JUDGE PAULRAJ: All right. So I'll go ahead and give you 15
5 minutes right now, but if you need to adjust that as we go, that's fine.

6 I'll give you a warning with about five minutes left, and then again
7 another warning as we wind down. I'll try to keep track of it. But I would
8 also ask that you keep track of your own time and kind of self-police a little
9 bit in terms of your time.

10 So let me know whenever you're ready.

11 MR. MAHONEY: Understood, and I'm ready --

12 JUDGE PAULRAJ: Okay.

13 MR. MAHONEY: -- to begin.

14 If I could ask that everyone turn to our third slide. That's -- that's
15 where I would like to start.

16 And to set the stage here a little bit for today's hearing, as everyone
17 will recall, the granted claims had a comparable dose requirement, and by
18 that I mean there is -- there was a dose of an animal-free toxin that is given
19 in a comparable amount to an animal-containing toxin. Those claims were
20 then amended whereby the animal-containing limitation of the claim was
21 narrowed to 20 units of Botox in the motion to amend.

22 And now where we are is the revised motion to amend that the claims
23 have been further amended such that it's to an amount of botulinum toxin A
24 present in about 20 units of MT10109L.

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