

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Mylan Pharmaceuticals Inc.  
Petitioner,

v.

Merck Sharp & Dohme Corp.  
Patent Owner.

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Case IPR2020-00040

U.S. Patent No. 7,326,708 B2

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**PETITIONER'S NOTICE OF APPEAL**

***Mail Stop "PATENT BOARD"***  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Pursuant to 28 U.S.C. § 1295(a)(4)(A), 5 U.S.C. §§ 701-706, 35 U.S.C. §§ 319, 141, 142, and in accordance with 37 C.F.R. §§ 90.2, 90.3, and Federal Circuit Rule 15(a)(1), Petitioner Mylan Pharmaceuticals Inc. hereby provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board in Case No. IPR2020-00040, entered on May 7, 2021 (Paper No. 91), and from all underlying orders, decisions, rulings, and opinions related thereto and included therein. This appeal is timely under 35 U.S.C. § 142 and Rule 15(a)(1) of the Federal Rules of Appellate Procedure.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), the expected issues on appeal include, but are not limited to the following:

1. The Board's determination that Petitioner failed to show that claims 1-3, 17, 19, and 21-23 of U.S. Patent No. 7,326,708 B2 ("the '708 Patent") are unpatentable as anticipated over the prior art.
2. The Board's determination that Petitioner failed to show that claims 1-4, 17, 19, and 21-23 of the '708 Patent are unpatentable as obvious over the prior art.
3. The Board's determination that the Patent Owner had reduced to practice the subject matter of claims 1, 2, 17, 19, and 21-23 of the '708 Patent before the applicable priority and/or publication date of WO

03/004498 A1, and whether WO 03/004498 A1 is available prior art to claims 1, 2, 17, 19, and 21–23 of the '708 Patent.

4. All other issues decided adversely to Petitioner in any orders, decisions, rulings, and opinions underlying or supporting the Final Written Decision.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), a copy of this Notice is being filed with the Director of the United States Patent and Trademark Office and with the Patent Trial and Appeal Board. In addition, a copy of this Notice and the required docketing fees are being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit via CM/ECF.

Respectfully submitted,

Katten Muchin Rosenman LLP

Date: July 8, 2021

/ Jitendra Malik /  
Jitendra Malik, Ph.D. (Reg. No. 55823)  
*Lead Counsel for Petitioner*

**CERTIFICATION OF SERVICE ON PATENT OWNER**

Pursuant to 37 C.F.R. §§ 42.6, the undersigned certifies that on July 8, 2021, a complete copy of the foregoing Notice of Appeal was served electronically on counsel of record for the Patent owner at the following electronic-mail addresses:

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Respectfully submitted,

Katten Muchin Rosenman LLP

By: / Jitendra Malik /  
Jitendra Malik, Ph.D.  
Reg. No. 55,823

In accordance with 37 C.F.R. §§ 90.2(a)(1) and 104.2(b), I hereby certify that, in addition to being filed electronically through the Board's E2E System, the original version of the foregoing Notice of Appeal was filed by hand on July 8, 2021, with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office  
c/o Office of the General Counsel  
Madison Building East, Room 10B20  
600 Dulany Street  
Alexandria, VA 22314

In accordance with 37 C.F.R. § 90.2(a)(2), I hereby certify that on July 8, 2021, a true and correct copy of the foregoing Notice of Appeal was filed electronically with the Clerk's Office of the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Katten Muchin Rosenman LLP

Date: July 8, 2021

/ Jitendra Malik /  
Jitendra Malik, Ph.D. (Reg. No. 55823)  
*Lead Counsel for Petitioner*