

Filed on behalf of Luitpold Pharmaceuticals, Inc.

By: George E. Quillin (GQuillin@foley.com)
Michael D. Kaminski (MKaminski@foley.com)
FOLEY & LARDNER LLP
3000 K Street, N.W., Suite 600
Washington, D.C. 20007
Tel: (202) 672-5300
Fax: (202) 672-5399

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHARMACOSMOS A/S,
Petitioner

v.

LUITPOLD PHARMACEUTICALS, INC.,
Patent Owner

Case IPR2015-01490
U.S. Patent No. 7,754,702

PATENT OWNER'S NOTICE OF APPEAL

NOTICE OF APPEAL

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Patent Owner Luitpold Pharmaceuticals, Inc. (“Luitpold”) appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on January 4, 2017 (Paper 54) (the “Final Written Decision”), and from all underlying orders, decisions, rulings and opinions, including without limitation the Decision Institution of *Inter Partes* Review dated January 8, 2016 (Paper 11), regarding Luitpold's U.S. Patent No. 7,754,702 (the “'702 Patent”).

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Luitpold anticipates that the issues on appeal may include the following, as well as any underlying findings, determinations, rulings, decisions, opinions, or other related issues:

- Whether the Board erred in finding that claims 1-3, 10-13, 23, 25, 27, and 41-43 of the '702 patent are unpatentable under 35 U.S.C. § 102(b) as anticipated by WO 2004/037865 A1 (“Geisser”);
- Whether the Board erred in finding that claims 1, 14, and 15 of the '702 patent are unpatentable under 35 U.S.C. § 102(b) as anticipated by R. van Zyl-Smit & J. A. Halkett, *Experience with the Use of an Iron Polymaltose (Dextrin) Complex Given by Single Total Dose Infusion to*

Stable Chronic Haemodialysis Patients, 92 NEPHRON 316–323 (2002) (“van Zyl Smit”);

- Whether the Board erred in finding that claim 30 of the '702 patent is unpatentable under 35 U.S.C. § 103(a) as obvious over van Zyl Smit and F. Funk, G. J. Long, D. Hautot, R. Büchi, I. Christl & P. G. Weidler, *Physical and Chemical Characterization of Therapeutic Iron Containing Materials: A Study of Several Superparamagnetic Drug Formulations with the β -FeOOH or Ferrihydrite Structure*, 136 HYPERFINE INTERACTIONS 73–95 (2001) (“Funk”);

- Whether the Board erred in denying Luitpold's Motion to Amend (Paper 24 and Paper 29 (corrected)); and

- Whether the Board erred in denying Luitpold's Motion to Exclude (Paper 44).

Copies of this Notice of Appeal are being filed simultaneously with the Director, the Patent Trial and Appeal Board, and the Clerk of the United States Court of Appeals for the Federal Circuit.

Date: March 2, 2017

Foley & Lardner LLP
3000 K Street, N.W., Suite 600
Washington, D.C. 20007

Respectfully submitted,

/George E. Quillin/
George E. Quillin
Registration No. 32,792

Case IPR2015-01490
U.S. Patent No. 7,754,702

Patent Owner's Notice of Appeal

Counsel for Patent Owner

Michael D. Kaminski
Registration No. 32,904

CERTIFICATION OF SERVICE

The undersigned certifies that a copy of the Patent Owner's Notice of Appeal is being served on March 2, 2017, by filing it through the PTAB E2E System as well as delivering copies via email to the following counsel for the

Petitioner:

Lisa Kole
Baker Botts L.L.P.,
30 Rockefeller Plaza, 45th Floor,
New York, NY 10112
E-mail: lisa.kole@bakerbotts.com

Steven Lendaris
Baker Botts L.L.P.,
E-mail: steven.lendaris@bakerbotts.com

Paul Ragusa
Baker Botts L.L.P.,
E-mail: paul.ragusa@bakerbotts.com

/ George E. Quillin/
George E. Quillin
Registration No. 32,792
Counsel for Patent Owner