

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUPIN LTD. AND LUPIN PHARMACEUTICALS, INC.,
Petitioners

v.

HORIZON THERAPEUTICS, LLC,
Patent Owner

Case IPR2016-00829
Patent 9,095,559

PATENT OWNER HORIZON THERAPEUTICS, LLC'S
NOTICE OF APPEAL

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22313

Notice is hereby given, pursuant to 35 U.S.C. §§ 141(c), 142, 319; 37 C.F.R. § 90.2(a), 90.3(a); and Federal Circuit Rule 15(a), that Patent Owner Horizon Therapeutics, LLC (“Horizon”) appeals from the Final Written Decision of the Patent Trial and Appeal Board (“Board”) entered on September 26, 2017 (Paper No. 42) in the above-captioned *inter partes* review of U.S. Patent No. 9,095,559 (“the ’559 patent”) to the United States Court of Appeals for the Federal Circuit. Horizon’s appeal includes any underlying orders, decisions, rulings, and opinions as well as any issues raised during these proceedings. This notice is timely filed within 63 days of the Board’s Final Written Decision. 37 C.F.R. § 90.3(a)(1).

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

- (1) the Board’s failure to observe procedure required by law, including, but not limited to, 5 U.S.C. § 554, 556, and 557, 35 U.S.C. § 316, including, for example, by basing its Final Written Decision on facts and/or law other than those advanced in the Petition or stated to be part of the grounds upon which trial was instituted in the Institution Decision;
- (2) the Board’s violation of Horizon’s Due Process rights under U.S. Constitution Amendment V by failing to provide requisite notice and

a full and fair opportunity to respond, including, for example, by basing its Final Written Decision on facts and/or law other than those advanced in the Petition or stated to be part of the grounds upon which trial was instituted in the Institution Decision;

- (3) the Board exceeding its statutory authority, including, for example, by basing its Final Written Decision on facts and/or law other than those advanced in the Petition or stated to be part of the grounds upon which trial was instituted in the Institution Decision;
- (4) the Board's impermissible shifting of the burden to Horizon to show patentability of the challenged '559 patent claims in violation of 35 U.S.C. § 316(e), 5 U.S.C. § 556(d), and 37 C.F.R. § 42.20(c);
- (5) the Board's determination that Petitioner has proved by a preponderance of the evidence that claims 1-15 of the '559 patent are unpatentable under 35 U.S.C. § 103, including, without limitation, the Board's construction and application of the claim language, the Board's interpretation of the references, and the Board's interpretation of expert evidence;
- (6) the Board's determination of obviousness of claims 1-15 of the '559 patent without support of substantial evidence;

- (7) the Board's Final Written Decision's dependence upon misinterpretation of the prior art;
- (8) whether *inter partes* review violates Horizon's rights under U.S. Constitution Amendment VII by extinguishing private property rights through a non-Article III forum without a jury; and
- (9) any findings or determinations related to issues (1)-(8) as well as all other issues decided adversely to Horizon in any orders, decisions, rulings and/or opinions.

Simultaneous with this submission, Horizon is filing a true and correct copy of this Notice of Appeal with the Director of the U.S. Patent and Trademark Office and electronically filing the same, along with the required docketing fees, with the Clerk of the U.S. Court of Appeals for the Federal Circuit as set forth in the accompanying Certificate of Filing.

Date: November 22, 2017

Respectfully submitted,

By: */s/Robert F. Green*

Robert F. Green
Registration No. 27,555
*Counsel for Patent Owner,
Horizon Therapeutics, LLC*

CERTIFICATE OF FILING

The undersigned hereby certifies that, in addition to being electronically filed through USPTO Patent Trial and Appeal Board End-to-End System, a true and correct copy of the above-captioned “PATENT OWNER HORIZON THERAPEUTIC LLC’S NOTICE OF APPEAL” is being filed by hand with the Director of the U.S. Patent and Trademark Office on November 22, 2017, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
Madison Building East, Room 10B20
600 Dulany Street
Alexandria, VA 22313

The undersigned also hereby certifies that a true and correct copy of the above-captioned “PATENT OWNER HORIZON THERAPEUTIC LLC’S NOTICE OF APPEAL” and the filing fee is being filed via the electronic filing system, CM/ECF, with the Clerk’s Office of the U.S. Court of Appeals for the Federal Circuit on November 22, 2017.

Dated: November 22, 2017

Respectfully submitted,

/s/Robert F. Green

Robert F. Green
Registration No. 27,555
*Counsel for Patent Owner,
Horizon Therapeutics, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2017, a copy of the foregoing
“PATENT OWNER HORIZON THERAPEUTIC LLC’S NOTICE OF APPEAL”
was served via electronic mail, as agreed to by counsel, upon the following counsel
for the Petitioners:

Elizabeth J. Holland: eholland@goodwinlaw.com

Cynthia Lambert Hardman: chardman@goodwinlaw.com

Robert V. Cerwinski: rcerwinski@goodwinlaw.com

/s/Robert F. Green

Robert F. Green

Registration No. 27,555

Counsel for Patent Owner,

Horizon Therapeutics, LLC