

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIODELIVERY SCIENCES INTERNATIONAL, INC.
Petitioner

v.

AQUESTIVE THERAPEUTICS, INC. (f/k/a MONOSOL RX, LLC)
Patent Owner

Case IPR2015-00165 / Case IPR2015-00168 / Case IPR2015-00169
Patent No. 8,765,167¹

PETITIONER'S NOTICE OF APPEAL

¹ Per Scheduling Order, Paper 7, fn. 1, Petitioner hereby attests that “the word-for-word identical paper is filed in each proceeding identified in the heading.”

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel, United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Pursuant to 35 U.S.C. §§ 141, 142, 319; 28 U.S.C. §§ 1295(a)(4)(A), 1651; 5 U.S.C. §§ 702, 704; and the inherent power of the United States Court of Appeals for the Federal Circuit to review the implementation of its own order—Petitioner BioDelivery Sciences International, Inc. (“BioDelivery”) provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Decisions on Remand, entered on February 7, 2019, in *Inter Partes* Review Case Nos. IPR2015-00165, IPR2015-00168, and IPR2015-00169, all directed to US Patent No. 8,765,167. The Court vacated the final written decisions and remanded each of the foregoing reviews to implement the Supreme Court’s decision in *SAS Institute, Inc. v. Iancu*, 138 S.Ct. 1348 (2018). Without vacating the prior decisions instituting each of the reviews, the Decisions on Remand purport to deny institution of the previously-instituted reviews in their entirety.

BioDelivery further provides notice that the issues on appeal include, but are not limited to, the scope of the Patent Office’s statutory authority under 35 U.S.C. §§ 314, 318(a); and whether the Decisions on Remand were arbitrary, capricious, an abuse of discretion, otherwise not in accordance with the law; in excess of the

Office's jurisdiction, authority, or limitations, or short of a statutory right; or
without observance of procedure required by law.

Respectfully submitted,

Dated: March 11, 2019

By: /s/ Kia L. Freeman

Filed on behalf of Petitioner,
BioDelivery Sciences International, Inc.

By:

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CERTIFICATE OF SERVICE

I hereby certify that today on March 11, 2019, in addition to being filed and served electronically through the Board's current portal (ptab.uspto.gov), a true and correct copy of the foregoing "**PETITIONER'S NOTICE OF APPEAL**" was filed by Priority Mail Express 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
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

I also hereby certify that today on March 11, 2019, a true and correct copy of the foregoing "**PETITIONER'S NOTICE OF APPEAL,**" was filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit along with the \$500 docketing fee set forth in Federal Circuit Rule 52 (for each of the three underlying actions), via CM/ECF and Pay.gov, and one paper copy was also sent to the following address by Priority Mail Express:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

I also hereby certify that, pursuant to 37 C.F.R. § 42.6(e), a true and correct copy of the foregoing “**PETITIONER’S NOTICE OF APPEAL**” was served today on March 11, 2019 on counsel of record for the Patent Owner as follows:

- by electronic mail to the counsel at all of the following email

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- by Priority Mail Express to the following counsel at the following

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Respectfully submitted,

By: /s/ Kia L. Freeman