

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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GRÜNENTHAL GMBH,  
Petitioner

v.

ANTECIP BIOVENTURES II LLC,  
Patent Owner

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Case PGR2018-00062  
U.S. Patent No. 9,707,245

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**PATENT OWNER'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

Patent Owner Antecip Bioventures II LLC (“Antecip”) hereby provides notice to Petitioner Grünenthal GmbH and to the Director of the United States Patent and Trademark Office, pursuant to 35 U.S.C. §§ 141 and 142, and 37 C.F.R. §§ 90.2 and 90.3, that Patent Owner is appealing to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered by the United States Patent Trial and Appeal Board in the above-captioned case on October 29, 2019 (Paper 32) (the “Final Written Decision”), and from all underlying orders, decisions, rulings, and opinions related to the Final Written Decision. This notice is timely under to 37 C.F.R. § 90.3 because it is being filed within sixty-three (63) days after the Board’s April 17, 2020 denial (Paper 36) of Antecip’s timely request for rehearing of the Final Written Decision.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Antecip indicates that the issues on appeal include at least the following:

- whether the Board erred in finding that Petitioner established by a preponderance of the evidence facts sufficient to support a legal conclusion that Varena<sup>1</sup> qualifies as a “printed publication” under 35 U.S.C. § 102;
  - whether the Board erred in allowing Varena to stand alone as

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<sup>1</sup> Described in Final Written Decision as “M. Varena et al., *Treatment of complex regional pain syndrome type I with neridronate: a randomized, double-blind, placebo-controlled study*, RHEUMATOLOGY 52: 534–42 (Nov. 2012).”

proof of its own “printed publication” legal status in the same way that the law allows for patents or published patent applications;

- whether the Board erred in finding Varena qualifies as a “printed publication” without any argument in the Petition or evidence filed with the Petition as to whether or how Varena was disseminated or otherwise made available such that persons of ordinary skill in the art exercising reasonable diligence could have located it before the priority date;
- whether the Board erred in allowing Petitioner to present evidence and argument for the first time with its Reply as to how Varena qualifies for “printed publication” legal status;
- whether the Board improperly imposed a burden shifting regime on Antecip in finding Varena to qualify for “printed publication” legal status because Antecip did not present evidence that Varena was *not* disseminated or otherwise made available such that persons of ordinary skill in the art exercising reasonable diligence could have located it before the priority date;
- whether the Board erred in finding that Petitioner established by a

preponderance of the evidence that claims 1–4, 9, 10, 12, 14, 16–18, 23, 24, and 27–29 of U.S. Patent No. 9,707,245 (“the ’245 patent”) are unpatentable under 35 U.S.C. § 102 as anticipated by Varena;

- whether the Board erred in finding that Petitioner established by a preponderance of the evidence that claims 1–29 of the ’245 patent are unpatentable under 35 U.S.C. § 103 as obvious based on Varena alone or in combination with Bruehl<sup>2</sup> and one or more of Gatti,<sup>3</sup> La Montagna,<sup>4</sup> and/or Muratore<sup>5</sup>;
- whether the Board erred in finding that Petitioner established by a preponderance of the evidence that claims 5–8, 21, and 25 of the ’245 patent are unpatentable under 35 U.S.C. § 103 as obvious based on

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<sup>2</sup> Described in Final Written Decision as “S. Bruehl, ‘*How common is complex regional pain syndrome-Type I,*’ PAIN 129:1–2 (2007).”

<sup>3</sup> Described in Final Written Decision as “D. Gatti et al., *Neridronic acid for the treatment of bone metabolic diseases*, EXPERT OP. ON DRUG METABOLISM & TOXICOLOGY 5(10): 1305–11 (Sept. 2009).”

<sup>4</sup> Described in Final Written Decision as “G. La Montagna et al., *Successful neridronate therapy in transient osteoporosis of the hip*, CLIN. RHEUMATOL. 24: 67–69 (Aug. 2004).”

<sup>5</sup> Described in Final Written Decision as “M. Muratore et al., *Il neridronato nel trattamento dell’algodistrofia simpatica riflessa dell’anca: confronto in aperto con il clodronato*, PROGRESSI IN RHEUMATOLOGIA, ABSTRACT BOOK VII CONGRESSO NAZIONALE COLLEGIO DEI REUMATOLOGI OSPEDALIERI 5 (Suppl. 1): 89 (Apr. 16–18, 2004).”

Varenna and Manicourt<sup>6</sup>; and

- whether the Board erred in finding that Petitioner established by a preponderance of the evidence that claim 30 of the '245 patent is unpatentable under 35 U.S.C. § 103 as obvious based on Varenna and Schwarzer<sup>7</sup>, optionally in combination with Bruehl and Gatti, La Montagna, and/or Muratore;

Antecip reserves the right to challenge any finding or determination supporting or related to the issues described above and to challenge any other issues decided adversely to Antecip in any orders, decisions, rulings, or opinions underlying the Final Written Decision.

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<sup>6</sup> Described in Final Written Decision as “D. Manicourt et al., *Role of alendronate in therapy for posttraumatic complex regional pain syndrome type I of the lower extremity*, ARTHRITIS & RHEUMATISM 50(11): 3690–97 (Nov. 2004).”

<sup>7</sup> Described in Final Written Decision as “Schwarzer & Maier, *Complex regional pain syndrome*, in GUIDE TO PAIN MANAGEMENT IN LOW-RESOURCE SETTINGS 249–54 (Kopf & Patel eds. 2010).”

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. §§ 42.6(e), 90.2 and 90.3, this Notice of Appeal is this day being served on Petitioner and filed with the Director of the United States Patent and Trademark Office. This Notice of Appeal, along with the required fees, is also being filed this day with the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted this 19th day of June, 2020.

**MASCHOFF BRENNAN, PLLC**

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ANTECIP BIOVENTURES II LLC

**CERTIFICATE OF SERVICE**

The undersigned, on behalf of the Patent Owner, hereby certifies that, in addition to being filed electronically through the Patent Trial and Appeal Board End to End (PTAB E2E) system, the original version of the foregoing PATENT OWNER'S NOTICE OF APPEAL was filed by hand on this 19th day of June, 2020, 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, 10B20  
600 Dulaney Street  
Alexandria, VA 22314-5793

The undersigned hereby further certifies that a true and correct copy of the foregoing PATENT OWNER'S NOTICE OF APPEAL was filed on this 19th day of June, 2020, with the Clerk's Office of the United States Court of Appeals for the Federal Circuit:

United States Court of Appeals for the Federal Circuit  
717 Madison Place, N.W., Suite 401  
Washington, D.C. 20005

The undersigned hereby certifies that a true and correct copy of the foregoing PATENT OWNER'S NOTICE OF APPEAL was served this 19th day of June, 2020, via electronic mail to lead and backup counsel of record for Petitioner as follows:

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