UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

DR. FALK PHARMA GMBH,)
)
PETITIONER,)
)CASE NO.
VS.)IPR2025-00052
)
ELLODI PHARMACEUTICALS, L.P.,)
)
PATENT OWNER.)
)
)
_____)

REPORTER'S REMOTE
TRANSCRIPT OF PROCEEDINGS
NOVEMBER 3, 2025

TECKLA T. CLAY, CSR 13125
OFFICIAL REPORTER PRO TEMPORE

Dr. Falk Pharma v. Ellodi Pharmaceuticals
IPR2025-00054
Dr. Falk Pharma Ex. 1114

APPEARANCES:

FOR PETITIONER: KNOBBE MARTENS
BY: NATHANAEL LUMAN, PH.D.
ERIC FURMAN
JARED BUNKER
3579 VALLEY CENTER DRIVE
SUITE 300
SAN DIEGO, CALIFORNIA 92130

FOR PATENT OWNER: COOLEY LLP
BY: ISHA AGARWAL
JONATHAN COUSIN
1299 PENNSYLVANIA AVENUE, NW
SUITE 700
WASHINGTON, DC 20004

PTAB PANEL: JUDGE RYAN FLAX
JUDGE ZHENYU YANG

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Calendar-CA@veritext.com 866-299-5127

REMOTE TRANSCRIPT OF PROCEEDINGS

NOVEMBER 3, 2025

7:02 A.M.

THE COURT: Okay. Good morning again. This is Judge Flax. I know we have 1, 2, 3, 4, 5, 6 counsel representing the parties on the line right now or maybe 5 and a court reporter. Is there a court reporter on the line?

COURT REPORTER: Good morning, Teckla Clay, CSR 13125.

THE COURT: Good morning. How are you?

COURT REPORTER: I'm well, thank you.

THE COURT: All right. I am hear with Judge Yang representing the panel in the various proceedings and the Board in this conference call.

We are here to discuss IPR 2025--00052 and 00054 and 00055 and 00056 each captioned Dr. Falk Pharma versus Ellodi Pharmaceuticals the respective petitioner and patent owner in each proceeding.

If any of that is incorrect would someone please speak up? And if that is correct would counsel for the parties please introduce themselves beginning with the petitioner.

MR. LUMAN: Thank you, your Honor. This is Nate

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Luman. I'm counsel for petitioner. I'm from the law firm of Knobbe Martens. I'm joined by my partners Eric Furman and Jared Bunker.

MS. AGARWAL: Good morning your Honor, this is Isha Agarwal representing patent owner Ellodi Pharmaceuticals. I am from Cooley LLP. I'm joined on the line with Jonathan Cousin also from Cooley.

THE COURT: Okay. Good morning to you all. Thank you for introducing yourselves. So the conference call today spanning these four cases we have common issues in three and unique issue in one.

And we had an e-mail from petitioner identifying what y'all wanted to discuss today. I'll let you introduce the issues. But it's our understanding that petitioner is seeking authorization for an additional 1,000 words in each of it's replies in the 52, 54 and 55 matters and I'm using those sort of summarily as the last two digits of each IPR.

They want to discuss related cases and how they're impacting or constraining the patent owner in this case or in these cases. Also petitioner wants to file a claim chart appendix with it's replies.

And petitioner doesn't oppose 1,000 word extension on the respective patent owner surreplies in these cases. So let's start with those. We can get to

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the 5, 6 IPR at the end.

So petitioner since you want authorization for these things could you review what you want and why?

MR. LUMAN: Yes. Thank you, your Honor. And thanks for making time to hold this meeting today. So as we're all aware there are five IPRs between the parties and there is also one PTR.

In the first IPR Patent owner disclaimed all of it's claimed and adverse judgment was entered last week. The first part of our request is based on that adverse judgment.

There is an enormous amount of overlap between the disclaimed patent claims and the remaining claims in the three IPRs in which we're asking for 1,000 additional words for that's in the 52, 54 and 55 cases.

During prosecution each of those three patents in the 52, 54 and 55 cases they were rejected for double patenting, what was now a disclaimed patent from the first IPR. And in fact the independent claim from the 55 case it changed one word from the now disclaimed claim.

They changed disintegrant to excipient and that makes the 55 case claim even broader and even more

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obvious than the now disclaimed claims from the first IPR.

The claims from the 52 case are also broader and more obvious than the now disclaimed claims from the first IPR. Patent owner filed terminal disclaimers for the patents in the 52, 54 and 55 cases that disclaimed any term beyond the now disclaimed patent.

Those three patents are not patently distinct from the disclaimed patent in the first IPR. And so we ask patent owner, we asked them if they intend to file disclaimers in any of the remaining IPRs and they refused to tell us.

There isn't anything in patent owner's responses in the 52, 54 or 55 IPRs that indicate those proceedings should come out in a different way than the first IPR which is for all of the challenged claims to be cancelled.

And we're concerned because petitioner spent significant time and effort building the case in the first IPR. And we're concerned that our efforts in the first IPR will get lost as we move between the different proceedings.

There has to be a practical effect of the adverse judgment in the first IPR on invalidity in the

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remaining IPRs. And we believe that the Board should use the patent owner estoppel provisions from Rule 42.73D3 to enforce the adverse judgment in the first IPR in the remaining pending 52, 54 and 55 IPRs by precluding the patent owner from taking action inconsistent with the adverse judgment in the first IPR.

And that comes from the federal circuit Sacute case as well as the plain reading of the rules. So we'd like the opportunity to present our position on that in writing. And that's the first part of why we are asking for 1,000 additional words in our reply brief.

THE COURT: Okay. There was another thing, are you about to get to this the Virginia and Germany cases?

MR. LUMAN: Yes, thank you, your Honor.

THE COURT: Okay.

MR. LUMAN: The second part of our request is to use a portion of the additional words to provide you with details regarding the rulings in the Virginia and German cases.

Those litigations there included on the list of related matters which the parties haven't provided details on the rulings in those litigations,

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the Virginia and German courts have both ruled unanimously in favor of petitioner and against the patent owner.

And so, so we believe that providing your Honors with the context of those litigations would help the Board understand the scope of the litigations between the parties and in particular how our client has had to spend significant time and effort and resources policing the patent owner's patents here at the US patent office, at the European patent office to defend against allegations of breach of contract in the Eastern District of Virginia regarding the IPRs and in the German courts.

THE COURT: Let me ask you this regarding these related cases, there is a standing order from the deputy director, I think, I guess our acting director, Acting Chief Deshpande you all are supposed to update us regarding related matters and decisions in related matters as a matter of routine course.

Why do you need extra words in your reply if you're supposed to automatically do that anyway? So it seems like it would be a separate filing on the those related litigations.

MR. LUMAN: Your Honor, we'd be happy to do it in a separate filing if you believe that's appropriate.

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The German case and Virginia case they involved an allegation of breach of contract based on filing the IPRs.

And so the rulings in those cases don't directly weigh on obviousness. They weigh on whether or not the petitioner was permitted to file IPRs in the cases. So if you'd like to have that briefing done separately we can do that or we can do it in the reply brief.

But we do think that it would be good to get the ruling on those in front of the Board so the Board can have a wholistic like understanding of the litigations between the parties.

And then the last part of our request is for permission to include an appendix claim chart that lists and aligns the claim limitations from the patents in the four proceedings. How we did it in basically Appendix A of Exhibit 1050.

So we're not asking to include any argument in the appendix. It would just be a listing of claim limitations side by side. And we think our proposed claim chart would be helpful to allow the Board to see the similarities between the claims.

Those types of claim chart listings they reproduce the claim language and they use a lot of the

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words. And so we're asking that the Board would permit the use of a claim chart listing as an appendix here that wouldn't count towards the word count.

The reason that we're asking for the extra words here is that in the first IPR we bumped right up on the word count limit for our reply. And in these pending proceedings the patent owner has repeated their same arguments again in the pending IPRs and they've also added some new arguments on secondary consideration.

And we don't believe those arguments have merit but we still need to use words to respond to those arguments. That's why we're seeking an increase of 1,000 words, that's about 5 to 6 pages, and the claim appendix listing the claims side by side from the various cases so that we can get these additional issues briefed.

And as you've seen from petitioner's IPR briefing our style, our briefing style is compact. It's to the point the words wouldn't be wasted. And we believe good cause exists for a modest increase in the word count.

And we also think that it would be good for the Board to have the perspective of both parties on the issues. And that's why we wouldn't oppose

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patent owner having an equal word count extension in it's surreply. Thank you.

THE COURT: Okay. I presume that at least a little bit of what those thousand words would explain what you're trying to show in the new appendix if it was authorized.

MR. LUMAN: That's right. We would like to refer to the appendix and so that the Board can see the overlap between the claims.

THE COURT: Okay. Thank you. Ms. Agarwal, do you have any response?

MS. AGARWAL: Yes, your Honor. Thank you. This is Isha Agarwal. So we believe that petitioner should be able to make it's arguments within the word limits prescribed particularly here where petitioner's positions are irrelevant to limiting issues and are legally precluded.

And patent owner should not have to expend it's own time and resources and significant cost to respond to these arguments that have no relevance to the proceedings and no legal basis.

THE COURT: May I ask you a question, Ms. Agarwal?

MS. AGARWAL: Yes.

THE COURT: So your opposing counsel mentioned

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terminal disclaimers in these related patents slash, I guess, applications at the time that were terminally disclaiming relative to the patent that you have already disclaimed the claims from. Is that an accurate summary?

MS. AGARWAL: Yes, during prosecution of the patents at issue in these 52, 54 and 55 IPRs there were terminable disclaimers filed to the 729 patent that we have disclaimed, correct.

THE COURT: And that 729 was in the 1197 case; is that right?

MS. AGARWAL: Yes.

THE COURT: Okay. So one, something that I would be interested in and I think the rest of the panel would be interested in is how do these terminal disclaimers apply to these remaining IPRs? I think that would be worth --

MS. AGARWAL: Yeah.

THE COURT: -- while thing to hear about or read about in their reply. So why do you think it wouldn't be worthwhile to have a bit more briefing on that?

MS. AGARWAL: So the case law is pretty settled first in regards to the estoppel provision of 42.73. The case that petitioner cited to in it's request for authorization draws a distinction between obtaining new

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claims and maintaining previously issued claims and in that case the federal circuit found that the patent owner is allowed to defend to be able to maintain already issued claims. And that defense is not an action that is inconsistent with adverse judgment.

And specifically to your question about the terminal disclaimer there is also well settled case law that terminal disclaimers are not admissions, that claims are not patently distinct. That's in the Quad Environmental Tech case as well as Motionless Keyboard.

So in our view this is pretty well settled case law that patent owner should be able to continue to defend these claims in these IPRs even though defendants deny patent has been disclaimed and terminal disclaimers were filed.

And for that reason we don't believe that petitioner's position have merit or that they need the additional 1,000 words to discuss these issues.

THE COURT: Okay. If we were to authorize additional words in these replies does patent owner want additional words in their surreplies?

MS. AGARWAL: Yes, absolutely. If the Board were to authorize 1,000 words for petitioner's reply we would also ask for the thousand words, additional 1,000 words to respond in our surreply.

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THE COURT: Okay. All right. I feel like we've got sufficient information on these first issues, unless there's anything else petitioner's counsel wants to note before we move on?

MR. LUMAN: Just very briefly, your Honor. I do think that the parties clearly disagree on the scope of patent owner estoppel and the effect of the terminable disclaimers.

THE COURT: I'm sure that's true. That would be something y'all would address; right?

MR. LUMAN: Correct, that was my point. We would address it in the extra thousand words.

THE COURT: All right. And anything else from you Ms. Agarwal?

MS. AGARWAL: Just on the EDBA and German proceedings as well as the appendix chart as petitioner admitted during his argument the proceedings in the EDBA, excuse me, and Germany, sorry excuse me, do still have to do, do not relate to the validity and the obviously challenges that petitioner has brought, but they rather have to do with contractual disputes regarding a settlement agreement between the parties.

And so for that reason we don't believe that there's a reason for the Board to necessarily dig into these issues in our reply or in the surreply. If

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1 the Board would like we agreed we can put it in as a
2 separate paper just to update the Board on related
3 matters.
4 But as petitioner pointed out it has
5 nothing to do with the, obviously, challenges made here
6 or validity of the patents. And then on the appendix
7 chart the chart is already in evidence. It's appended
8 to each of the declarations and each of the IPR
9 proceedings, each of the expert declarations.
10 So petitioner can still reference it.
11 They can reference it to reference to the expert
12 declaration and that appendix. So we don't see a need
13 for it to be appended to the reply and for petitioner
14 to potentially to, not potentially but to actually
15 circumvent the word limit here by appending the
16 appendix chart to the reply. We don't see a need for
17 that.
18 THE COURT: Is that so, Mr. Luman? Is it
19 already in evidence, this very same claim chart that
20 you want to submit?
21 MR. LUMAN: The claim chart is part of our
22 expert declaration. And our concern is if we
23 referenced that chart in our reply then patent owner
24 may accuse us of improper incorporation by reference.
25 And so that's why we're seeking express authorization

to use the, to append it to our reply brief and have it not count towards those word count limit.

THE COURT: Right. It sounds like she's saying that they would prefer you to do it that way. So I don't think, I mean I don't think she's going to, I don't think patent owner will be objecting to you citing evidence that's already in the record in that way.

So I don't know if you really need that appendix part. It sounds like you all are kind of agreeing that it's already there.

MR. LUMAN: That's correct, it's there. And if we have permission to reference it in our reply then that's what we're seeking to make sure that we don't get accused of improper incorporation by reference.

THE COURT: Ms. Agarwal, can you certify that you won't object to it for that reason?

MS. AGARWAL: Yes we won't object to petitioner referring to it.

THE COURT: Okay.

MS. AGARWAL: Yes.

THE COURT: All right. So let's move onto the second issue here which is IPR 2025--00056 where the due date for the filing of a patent owner response has come and gone, that was September 9th.

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So I understand that per the scheduling order you want to talk about that in this conference call. So petitioner what do you have to say about that?

MR. LUMAN: So you're correct, your Honor, that petitioner didn't file a patent owner response and they clearly waive patent owner response. And so I think we need to hear from patent owner what their intentions are if they're going to further participate in the IPR, if they're going to file a request for adverse judgment. We just need to know what their intentions are.

And if they are not going to file a request for adverse judgment then the petitioner would request permission to file a short 10 page reply to the institution decision so that we can just make it clear on the record that petitioner agrees with the Board's analysis and the decision.

THE COURT: Okay. Ms. Agarwal?

MS. AGARWAL: So to petitioner's first point we do not intend to file for adverse judgment at this time. And correct we did not file a patent owner response. But based on the Apple versus Zipit Wireless precedential decision we would still like the Board to determine the merits of petitioner's challenge as well

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as the preliminary response that patent owner did file in the 56 proceeding.

THE COURT: I'm sorry say that last part again. What was that last part that you just said?

MS. AGARWAL: That we would yes --

THE COURT: What did you --

MS. AGARWAL: We would like the Board to determine the merits of petitioner's challenge based on the papers that are already in the record including patent owner's preliminary response.

THE COURT: Well I think you do know that we won't do that; right? We will not consider your preliminary response as continuing arguments. It says it right in the scheduling order that arguments not made in a response are waived. So that won't be happening.

MS. AGARWAL: Okay. Thank you, your Honor. But still according to the Apple versus Zipit Wireless case the Board still has to determine the merits of petitioner's challenge. And, and so we're asking the Board to move forward in that regard.

THE COURT: So you want a final decision?

MS. AGARWAL: Yes, correct.

THE COURT: Okay. And what is your position on what Mr. Luman just asked for for petitioner? He wants

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10 pages to respond to what the panel had to say in the institution decision. What do you say about that?

MS. AGARWAL: We don't believe that's necessary paper for petitioner to file. I mean the institution decision lays out the Board's positions on institution. And we're simply asking for if petitioner does file such a paper we ask for an equivalent 10 pages to respond if the Board would allow that. This is the first that we're hearing about petitioner's request.

THE COURT: Yeah it's a unique request. I've never heard that before. So it's an interesting request from a party that has no opposition to their petition. Okay. So is there anything else on this IPR 20250006 that we haven't covered? Mr. Luman, anything else?

MR. LUMAN: No, your Honor. Thank you.

THE COURT: Ms. Agarwal, anything else on that one?

MS. AGARWAL: I would just like to also say that we're still evaluating the, this 56 IPR. And we will keep the Board apprised of any changes in our thought process there.

THE COURT: Okay. All right. So if you all could please just wait for a few minutes I'm going to confer with Judge Yang and we'll get back to you in

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just a few minutes with our thoughts. Please hold on.

(A discussion is held off the record)

THE COURT: Okay. We are back. Hello everyone. Let me know if you can hear me?

MR. LUMAN: Yes.

MS. AGARWAL: Yes.

COURT REPORTER: Yes.

THE COURT: So on the first issue regarding IPR 202500052 and 54 and 55 we will be granting 1,000 additional words to each party in their respective reply and their surreply. Petitioners laid out several issues that they want to address.

We're not going to restrict them on what they want to address in those extra thousand words be that, you know, the relationship between all these various patents, terminal disclaimers. If you want to touch on these related litigations, that's fine.

Although honestly I have a hard time finding much interest in those. But if they are important, please let us know why. And of course patent owner will get an equivalent surreply. And they can address the issues that are raised in the reply.

I think as we've all agreed there's no need for adding that claim chart appendix to the reply.

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Please just cite to it and reference it, that it's already in the record so identify it that way.

I think that that's all the issues related to those IPRs. And for IPR 2025-00056, really nothing need be done right now. We are not going to authorize any reply for petitioner to the institution's decision. So there will be no more briefing in that case unless something unusual and unexpected happens.

And we will wait to see and if patent owner has anything that they want to update us on as we move ahead towards a final decision in that matter as the burden is petitioner's in the case, different threshold and different standards of review and different burden between the institution stage and the final decision so, you know, petitioner will be held to the burden that's required of a final decision there.

Having said all this, I'm giving you authorization, we'll follow up with an order in the IPRs 52, 54 and 55 just summarizing what we've discussed here and officially granting the additional thousand pages to each of the parties filings in those cases.

But that will be forthcoming so you can proceed expecting that you will be granted those extra thousand words. Let's see, is there anything I'm

overlooking? Do you all feel satisfied with what we've discussed at this point?

MR. LUMAN: Yes, your Honor. Thank you. Would you like the transcript to be submitted as an exhibit in the IPR?

THE COURT: Please do, yes, please do that.

MR. LUMAN: We'll take care of that, your Honor.

THE COURT: Ms. Agarwal, are you satisfied? Do you understand where we're going with this?

MS. AGARWAL: Yes, your Honor. Thank you.

THE COURT: Okay. All right so in the next couple days expect our proceeding order summarizing what we just talked about and the authorization and just please proceed to meet the due dates. We will review the briefing when it comes in.

MR. LUMAN: Thank you, your Honor.

MS. AGARWAL: Thank you, your Honor.

THE COURT: Anything else that we should address now that we're all here or are we good?

MS. AGARWAL: Nothing further from patent owner.

MR. LUMAN: Nothing.

THE COURT: Okay everyone have a great day. We'll adjourn.

(The proceeding concluded at 7:34 a.m.)

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	)
PATENT OWNER.	)
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I, TECKLA CLAY, CSR NO. 13125, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 15 COMPRISE A FULL, TRUE AND CORRECT REMOTE TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE ABOVE ENTITLED CAUSE ON NOVEMBER 3, 2025 THIS 18TH DAY OF NOVEMBER 2025.

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