

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FRESENIUS KABI SWISSBIOSIM GMBH,
Petitioner,

v.

REGENERON PHARMACEUTICALS, INC.,
Patent Owner.

Case: IPR2025-01269
U.S. Patent No. 10,828,345

PATENT OWNER'S REPLY
IN SUPPORT OF REQUEST FOR DISCRETIONARY DENIAL

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CASES

<i>Allergan, Inc. v. Sandoz, Inc.</i> , 796 F. 3d 1293 (Fed. Cir. 2015)	5
<i>Atofina v. Great Lakes Chem. Corp.</i> , 41 F.3d 991, 999 (Fed. Cir. 2006)	5
<i>In re Magnum Oil Tools Int’l, Ltd.</i> , 829 F.3d 1364, 1381 (Fed. Cir. 2016)	4

OTHER AUTHORITIES

37 C.F.R. § 42.22	2
37 C.F.R. § 42.104	2
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TABLE OF EXHIBITS

Exhibit	Description
2001	Certified File History of U.S. Patent No. 10,828,345 B2
2002	Comparison between April 28, 2009 and December 1, 2009 Clinicaltrials.gov Record Histories for NCT00509795, available at https://clinicaltrials.gov/study/NCT00509795?term=NCT00509795&rank=1&tab=history&a=9&b=10#version-content-panel .
2003	“Information from ClinicalTrials.gov archive on the view of NCT00509795 ‘Vascular Endothelial Growth Factor (VEGF) Trap-Eye: Investigation of Efficacy and Safety in Wet Age-Related Macular Degeneration (AMD)’ (12-01-2009)” excerpted from file history of U.S. Patent Application No. 14/972,560.
2004	Donald Trump Remarks Transcript, Calls Contracting COVID-19 “Blessing from God” October 7, https://www.rev.com/transcripts/donald-trump-remarks-transcript-calls-contracting-covid-19-blessing-from-god-october-7 (last visited September 18, 2025).
2005	Kiran Stacey, David Crow, and Donato Paolo Mancini, <i>Regeneron: the company that Trump claims cured his Covid</i> , Financial Times, October 9, 2020, https://www.ft.com/content/70672ed3-bf66-4c14-8392-076d0c503558 .
2006	Kiran Stacey, <i>Trump calls Coronavirus treatment he received a “cure”</i> , Financial Times, October 7, 2020, https://www.ft.com/content/a792326c-40e7-460d-ac38-8a9b03286ea0 .
2007	U.S. Provisional Application No. 61/432,245

Exhibit	Description
2008	U.S. Provisional Application No. 61/434,836
2009	U.S. Provisional Application No. 61/561,957
2010	Eylea Label (November 18, 2011)
2011	P.J. Rosenfeld et al., <i>Ranibizumab for Neovascular Age Related Macular Degeneration</i> , 355 N. ENG. J. MED. 1419 (2006)
2012	C.D. Regillo et al., <i>Randomized, Double-Masked, Sham-Controlled Clinical Trial of Ranibizumab for Neovascular Age-Related Macular Degeneration: PIER Study Year 1</i> , 145 AM. J. OPHTHALMOLOGY 239-248 (2008)
2013	N. M. Bressler, <i>Antiangiogenic Approaches to Age-Related Macular Degeneration Today</i> , 116 AM. ACAD. OPHTHALMOLOGY S15 (2009)
2014	Curriculum Vitae of Dr. Neil M. Bressler, M.D.
2015	Expert Declaration of Dr. Neil M. Bressler in Support of Patent Owner Preliminary Response.
2016	MACUGEN® Prescribing Information (2006)
2017	SUSTAIN - Study of Ranibizumab in Patients with Subfoveal Choroidal Neovascularization Secondary to Age-Related Macular Degeneration (Dec. 09, 2010), https://www.clinicaltrials.gov/study/NCT00331864?tab=history&a=10#version-content-panel

Exhibit	Description
2018	A.P. Adamis, <i>Angiogenesis and Ophthalmic Disease</i> , 3 ANGIOGENESIS 9 (1999)
2019	G.L. Skuta et al, <i>Retina And Vitreous</i> 72-73, 109-114, 121, 128-29 (Section 12, 2009)
2020	Barbazetto et al., <i>Dosing Regimen and the Frequency of Macular Hemorrhages in Neovascular Age-Related Macular Degeneration Treated with Ranibizumab</i> , 30 RETINA 1376 (2010).
2021	P.J. Patel et al., <i>A Randomised, Double-Masked Phase III/IV Study of the Efficacy and Safety of Avastin® (Bevacizumab) Intravitreal Injections Compared to Standard Therapy in Subjects with Choroidal Neovascularization Secondary to Age-related Macular Degeneration: Clinical Trial Design</i> , 9 BIOMED CENT. 56 (2008)
2022	Prospective OCT Study with Lucentis for Neovascular AMD (PrONTO study), NCT00344227, ClinicalTrials.gov (June 23, 2006), https://clinicaltrials.gov/study/NCT00344227?tab=history&a=1#version-content-panel

Fresenius opposes Patent Owner's request for discretionary denial by mischaracterizing the record and asserting new theories wholly absent from the Petition. Misguided appeals to policy cannot rescue its error-laden submissions.

I. Fresenius badly mischaracterizes the patent and its file history.

Fresenius's opposition brief is riddled with misstatements:

1. “[T]he PTAB deemed invalid claim 1 of the ’601 patent, with tertiary dosing ‘administered every 8 weeks,’ (Ex. 1014), whereas claim 1 of the presently-challenged ’345 Patent claims tertiary dosing ‘administered every 8 weeks.’” P. 3.

This is false. The challenged patent claims 12-week dosing, a fact that materially distinguishes it from the 8-week regimen of the ’601 patent.

2. “As to the first Advanced Bionics prong, Regeneron notes that the individual references are cited but were not discussed during prosecution[.]” P. 2.

This is false and misleading. All references of the Grounds were cited during prosecution, PO Br. 5-6, and the Examiner rejected the challenged claims over a disclosure nearly identical to that relied upon by Petitioner in each of its allegedly anticipatory references (Grounds 1-4), which also serve as the primary references in all obviousness grounds (Grounds 5-9), PO Br. 7-17. The Examiner also expressly rejected different claims over Dixon (EX1007, asserted in Grounds 1, 5, and 6). *Id.*

3. “While Regeneron now claims that the Examiner could not have believed the Regeneron 2009 press release to be prior art, Br. at 11-12, that remained

Regeneron's lead argument during prosecution." P. 11.

This is false. As Regeneron's brief (at 11-12) makes clear, the Examiner assumed this press release was prior art and nevertheless found it did not disclose the claimed regimen. In prosecution, Regeneron noted that the press release's publication date had not been established. PO Br. 11. That was not Regeneron's "lead argument"—the bulk of Regeneron's two office actions addressing the press release focused on its failure to disclose a 12-week tertiary dose. *Id.* at 11-12.

4. "[T]he [PTO] did not have the benefit of an expert declaration." P 2.

This is misleading. The Petition *never cites* the Galanis declaration (EX1003) with respect to its sole assertion of Examiner error—namely, that the art disclosed a 12-week tertiary dose. Pet. 46-47 (no cite to EX1003 in row for 12-week limitation in Grounds 1-4), 51-52 (no cite to EX1003 in Ground 5), 52 (relying on pp. 46-47 for disclosure of 12-week limitation in Grounds 6-9). Fresenius asserts (at 9-10) that Dr. Galanis "explained why the prior art met the claim term" in ¶¶ 218-219, 263-264, 292-293. The Petition never references those paragraphs. They should be disregarded. 37 C.F.R. §§ 42.22(a)(2), 42.104(b)(5).

Even had it been cited, the Galanis declaration is entitled to little weight in view of its (A) conclusory allegations (e.g., statements regarding 12-week dosing (¶¶ 218-219, 263-264, 292-293) merely parrot the Petition at 46-47, sole statement supporting Ground 5 (¶ 205) is that "[a]lternatively, the Challenged Claims are

obvious over Dixon in view of NCT-377”); **(B)** failure to apply the same priority date as the Petition, EX1003 ¶ 64 (Nov. 2011), Pet. 12 n.1 (Jan. 2011), and; **(C)** reliance on art other than the exhibits filed, EX1003 ¶¶ 137-40, 157 (relying on 8/4/2008 entry for NCT-377); EX1018 at 1, 3 (dated 3/17/2008); EX1003 ¶ 133 (relying on “Version 9” of NCT-795) EX1017 (redline of two versions of NCT-795).

II. Fresenius improperly injects new theories absent from its Petition.

Fresenius seeks to add new grounds and arguments found nowhere in its Petition:

1. *“NCT-377, NCT-795, and Regeneron 2008 press release do not require PRN for the 12-week administration.” P. 6.*

This new and unsupported attorney argument directly conflicts with Dr. Galanis’s declaration, which equated Dixon’s PRN dosing with the regimens in NCT-377, EX1003 ¶ 214, and thus to the identical disclosure of NCT-795, EX1018 at 6; EX1017 at 6-8. Regeneron’s expert, Dr. Bressler, confirms that each of Fresenius’s references describes PRN (“as needed”) dosing. EX2015 ¶¶ 82, 87, 94, 97. Regardless, Regeneron’s position does not turn on the asserted art’s disclosure of PRN dosing per se, but instead on the *lack* of disclosure regarding when a tertiary dose is administered between 4 and 12 weeks. Nor does Regeneron’s position assume the claims require more than one 12-week dose. *Contra* p. 9.

2. *Grounds 5-9 are based on combinations of the four central references, and those combinations were not previously considered. P. 6.*

This is not what the Petition asserts. Ground 5 combines Dixon with NCT-377 (i.e., two of the “four central references” that Fresenius asserts disclose the claimed 12-week dose). **Ground 5 is the Petition’s only obviousness ground directed to claims 1-9.** It asserts, *ipse dixit*, that if Dixon does not incorporate NCT-377, then it would have been obvious to combine their disclosures with a reasonable expectation of success—all without a shred of supporting evidence or argument. Pet. 51-52. Grounds 6-9, in contrast, are directed *only* to challenged claims 10 and 11; each combines of *one* of Dixon, NCT-377, NCT-795, *or* Regeneron (8-May-2008) with Regeneron (18-Feb-2010), a reference Fresenius failed to plead is prior art. Pet. 38 (wrongly asserting that Feb. 2010 is more than one year before Jan. 2011), 12 n.1 (Jan. 2011 priority date). **Neither the Petition nor Dr. Galanis directs actual evidence or argument to the purported obviousness of claims 1-9.** The Board may not fill that void. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (“Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond.”).

3. “[T]he prior art ... expressly disclosed the range of 4 to 12 weeks ... alternative[ly], the prior art range at least includes 12-weeks and therefore renders prima facie obvious all challenged claims[.]” P. 10.

The Petition makes no reference to the Federal Circuit’s range law; it does not even contain the word “range.” Fresenius cannot now set forth a new interpretation

of the prior art and new legal theories of anticipation or obviousness along with it. *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1370 (Fed. Cir. 2016) (affirming exclusion of reply raising new theory); 37 C.F.R. § 42.23(b). Regardless, range law is unavailing. “[T]he disclosure of a range . . . does not constitute a specific disclosure of the endpoints of that range,” and only “a very small genus” can anticipate specific values within a range. *Atofina v. Great Lakes Chem. Corp.*, 441 F.3d 991, 999-1000 (Fed. Cir. 2006). As Regeneron’s expert explained, each reference discloses a *vast* number of possible dosing intervals between 4 and 12 weeks because none specifies how doctors make dosing decisions or when they see patients. EX2015 ¶¶ 67-68, 88, 97. Neither Dr. Galanis nor the Petition grapple with this issue, and Fresenius could not have overcome the art’s express teaching away from a 12-week interval in any event. *Id.* ¶¶ 102-103; EX1007 at 2 (“quarterly dosing is associated with poorer outcomes”); *Allergan, Inc. v. Sandoz, Inc.*, 796 F.3d 1293, 1304-05 (Fed. Cir. 2015) (teach away overcomes range disclosure).

III. Fresenius’s Policy-Based Arguments Are Misplaced.

Fresenius (at 2) ignores the Administration’s foremost priority—protecting American jobs and the U.S. economy. Fresenius, a Swiss company, is partnered with Sam Chun Dang, a Korean manufacturer. Pet. 4. Regeneron is an American company that developed Eylea[®] in the U.S., manufactures Eylea[®] in the U.S., and employs thousands in the U.S. Lawful patent protection supports this investment.

Date: November 3, 2025

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CERTIFICATE OF SERVICE
(37 C.F.R. § 42.6(e))

The undersigned hereby certifies that on November 3, 2025, I caused true and correct copies of the following materials:

- Patent Owner's Reply In Support of Request for Discretionary Denial

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