

Volume: I
Pages: 1-18
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IN THE MATTER OF:
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHARLES RIVER LABORATORIES, INC.,

Petitioner,

v.

SEIKAGAKU CORPORATION,

Patent Owner.

IPR2025-00440 (Patent 11,236,318 B2)
PGR2025-00023 (Patent 11,959,109 B2)1

TELEPHONIC BOARD CONFERENCE CALL
WEDNESDAY APRIL 29, 2026
JUDGES FITZPATRICK, MITCHELL AND CHANG
COURT REPORTER: MICHELE DECOSTE
COMMENCING AT 1:00 P.M.

CRL Exhibit 1075
CRL v. Seikagaku
PGR2025-00023

1 R E M O T E A P P E A R A N C E S

2

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1 P R O C E E D I N G S

2 THE COURT: This is Judge Fitzpatrick
3 speaking, and I have Judges Mitchell and Chang on
4 the line. And now why don't we do a roll call,
5 starting with petitioner? Anyone who's on the
6 phone on behalf of petitioner, please.

7 MR. MCKEOWN: Good afternoon, Your
8 Honor. Scott McKeown of Wolf Greenfield on
9 behalf of petitioner. I'm joined today by
10 Chelsea Loughran and Flora Lou also of Wolf
11 Greenfield. And we have a court reporter on the
12 line, which I think has just indicated her
13 presence there.

14 THE COURT REPORTER: Yes, hi.
15 Michele DeCoste, the court reporter.

16 THE COURT: Excellent. Thank you.
17 And now how about counsel for patent
18 owner, please?

19 MR. STEIN: Yes, hi, Your Honor. This
20 is Alex Stein on the line from Morgan Lewis and
21 on behalf of the patent owner. And with me is
22 Wan-Shon Lo, also of Morgan Lewis.

23 THE COURT: All right, thank you.
24 I have a question for my own benefit.

1 Can you guys see profile pictures on the Teams
2 thing for the judges?

3 MR. STEIN: Oh, this is patent owner,
4 Alex Stein. Actually, I connected via my phone
5 -

6 THE COURT: Okay.

7 MR. STEIN: -- so I can only see the
8 phone line, but I can switch to Teams if that's
9 preferred.

10 THE COURT: No worries. If anybody is
11 on and can see, I'm just wondering, because we
12 used to use this internally only and now we're
13 using it externally, so I was just wondering if
14 our profile pictures show up on the outside, but
15 let's get to business.

16 Okay. So Mr. McKeown, you requested
17 this call, correct?

18 MR. MCKEOWN: Yes, sir.

19 THE COURT: And I want to cut right to
20 the chase and ask, I think I know the answer to
21 this, but is there anything in the motion that
22 you've served and would like to file that is not
23 already of record other than the relief that you
24 would seek in that motion?

1 MR. MCKEOWN: Yes, Your Honor. There
2 is, I believe, citations to the EPO patent, which
3 I think is highly relevant given you have the
4 same inventors making a statement there; for
5 example, no one had ever been successful for a
6 long time and that, you know, the inventors here
7 completed this invention of this sequence as of
8 2016. So there's that content, and there's also
9 an explanation in the motion as to how this
10 taking of clearly inconsistent positions is
11 inconsistent with the director's recent guidance
12 in the Revvo Tech decision. So that would be the
13 new content in addition to explaining the
14 relevance of these inconsistent positions
15 relative to various ethical rules and regulations
16 in the duty of candor.

17 THE COURT: So, okay, backing up, the
18 first thing you mentioned, I think, is already in
19 the record, isn't it, the discussion about
20 potentially inconsistent statements made at the
21 EPO?

22 MR. MCKEOWN: It is in the record, Your
23 Honor. I don't believe the actual EPO patent
24 itself is in the record. Exhibit 1043, for

1 example, is the EPO opposition.

2 THE COURT: Gotcha. Do you recall,
3 your motion, your would-be motion, are there
4 exhibits that were served with it?

5 MR. MCKEOWN: I think, and Ms. Loughran
6 can correct me if I'm wrong, I believe the only
7 new exhibit would be the EPO patent itself.

8 MS. LOUGHRAN: That's correct. That's
9 the EPO patent. We also included the translation
10 of the priority document in that case, and the
11 information about the results of the oral
12 proceedings in Europe in which the existing
13 claims in the 670 European patent were confirmed.
14 So those would be the three new exhibits.

15 THE COURT: Okay. So the EPO patent
16 was filed a claims priority to a document that
17 was written in another language?

18 MS. LOUGHRAN: Yes, correct. It was in
19 Japanese.

20 THE COURT: Okay.

21 All right. I'm going to turn over to
22 -- Mr. Stein, how does that sound to you in terms
23 of what is new or what would potentially be new
24 in this motion relative to the existing record?

1 MR. STEIN: That's consistent with our
2 understanding, although I, you know, of course,
3 disagree with the foundation for any sanctioned
4 motion here, and I'd be happy to get into that.
5 But in terms of the specific question you asked,
6 that's what we've been served with and that's
7 what they've provided, but I'd love an
8 opportunity to talk about why we shouldn't even
9 get into having extra briefing on this because
10 it's completely baseless.

11 THE COURT: Understood. Let's hold off
12 on that.

13 Going into this call, the judges have
14 -- we've already talked, and one of the things
15 that we're concerned about is having more
16 briefing about an issue that's already been
17 argued and presented to us, which may or may not,
18 you know, affect the final written decision. And
19 so our thinking is that this -- we would not like
20 to see a motion ahead of the final written
21 decision. And so the next question -- and I
22 think I know your answer, Mr. Stein, so the next
23 question will be for Mr. McKeown.

24 Is there any -- can you identify any

1 prejudice in waiting until after the final
2 decision to file your motion for sanctions?

3 MR. MCKEOWN: Sorry, Your Honor, you
4 broke up there. Can I explain...?

5 THE COURT: I am proposing right now
6 that we not authorize a filing of your motion and
7 that we wait and see what happens in the final
8 written decision. And I'm wondering if you
9 consider that to be prejudicial to you and if you
10 could identify any specific prejudice.

11 MR. MCKEOWN: Sure, Your Honor. Under
12 Revvo Tech, if petitioner makes inconsistent
13 statements, then the director or the panel would
14 essentially terminate the proceeding. While it's
15 not called a sanction, it certainly operates that
16 way. In this case, we have a patent owner that,
17 at least in our opinion, is doing these things.
18 And, obviously, as petitioner, we can't get the
19 proceeding terminated. That's not what we're
20 looking to do here. But we think, given the
21 inconsistencies, and, in fact, you know, given
22 that, frankly, we don't think there is an
23 explanation as to how you can argue that
24 something is so well known and understood in 2013

1 that you don't even have to include it in your
2 patent application, but then in 2016, it's
3 somehow inventive, we think that the prejudice
4 flowing from that gets into the rules and
5 regulations that we cite in the motion that
6 relate to ethics and the duty of candor.

7 And so from a big-picture
8 perspective, this type of conduct, we feel, is
9 significant and important enough that we wouldn't
10 want to see it repeated in other cases. And so
11 this could potentially escape attention. If, you
12 know, for example, we go to final written
13 decision and the panel agrees with petitioner on
14 the merits, then the situation is created that
15 there's no downside to doing these kinds of
16 things. So that would be the point that I would
17 highlight.

18 THE COURT: Understood.

19 I have another question. Let's say we
20 don't authorize the motion. Do you think we need
21 to see the European patent and it's the
22 translation of the priority document -- and there
23 was a third document that, as you mentioned, now
24 escapes my memory. Do we need to see those three

1 potential exhibits to the motion? Will we need
2 to see those to resolve the final written
3 decision?

4 MR. MCKEOWN: To resolve the final --
5 sorry, I assume that question was for me, Your
6 Honor, but to -

7 THE COURT: Sure, for both of you, I
8 guess, yes.

9 MR. MCKEOWN: Yes, to resolve the final
10 written decision, I don't know that it's
11 necessary. I believe that it would be helpful,
12 given that this is also an issue that's been
13 briefed in terms of this 112 defect is the case,
14 and this exhibit speaks to that from the, you
15 know, mouths of the inventors themselves stating
16 they've completed the invention.

17 THE COURT: So I'm already aware
18 acutely of the arguments, both parties'
19 arguments. And I'm asking you, do you think that
20 -- I mean, you know, that the panel is
21 potentially incapable of fully understanding your
22 arguments without that European patent in the
23 record?

24 MR. MCKEOWN: No, Your Honor. I don't

1 think it brings it to that that level.

2 THE COURT: Okay. Let's go on.

3 Mr. Stein, we're not going to rule on anything --
4 I know you might have something to say, but we
5 might not even get into certain stuff, so I'm not
6 going to have you respond right now. I'm going
7 to have the parties go on standby and just wait
8 while I confer the panel.

9 MR. STEIN: Okay, thanks, Your Honor.
10 That's fine.

11 MR. MCKEOWN: Thank you, Your Honor.

12

13 (Pause.)

14

15 THE COURT: Mr. McKeown and Mr. Stein,
16 can you each just confirm you're still on the
17 line?

18 MR. STEIN: Yeah, this is Mr. Stein. I
19 can still hear you, Your Honor.

20 MR. MCKEOWN: Petitioner as well, Your
21 Honor.

22 THE COURT: Okay, we're not going to
23 authorize a motion at this time. We think the
24 arguments that are going to be presented, that

1 would be presented in there are so entangled with
2 the final written decision, at least part of the
3 argument is the final written decision that we
4 need to focus on that first. And if you think --
5 Mr. McKeown, if you think a motion is necessary
6 after the final written decision is entered, you
7 can renew your request to file it.

8 I think that covers everything. Let me
9 know if you have any questions.

10 MR. MCKEOWN: No questions from
11 petitioner, Your Honor. Thanks for the panel's
12 time.

13 MR. STEIN: I have one question, Your
14 Honor, if you'll entertain me for a minute here.
15 Is that okay?

16 THE COURT: Sure.

17 MR. STEIN: Yes, so the only question I
18 have is, of course, I'd be happy to get into the
19 argument, but it doesn't seem that I need to, but
20 given that both parties have alleged
21 inconsistencies, what we would ask for
22 eventually, if this does go forward, is we're
23 going to ask for our fees and costs under
24 37CFR42.11D2. So I wanted to preview that for

1 Your Honors, but of course, I understand that
2 this is going to get kicked until after the
3 hearing, but I just wanted to preview that that's
4 on our minds as well just because of the dilatory
5 tactics being employed here. We don't have to
6 get into that right now, but I just wanted to
7 make sure you're aware that we would be seeking
8 that later.

9 THE COURT: Okay. And that's of record
10 now. And that reminds me, Mr. McKeown, you have
11 the transcript. Can you file that as an -- let's
12 do it as an exhibit, you know, when it's, you
13 know, reasonably quickly upon its finality.

14 MR. MCKEOWN Yeah, what we'll do, Your
15 Honor, it should be available by the end of the
16 week, if not sooner.

17 THE COURT: Okay.

18 MR. MCKEOWN: We'll get it on file by
19 early next week at the latest.

20 MS. LOUGHRAN: And Mr. Stein, I wanted
21 to confirm something. So you said that you'll be
22 seeking costs. Are you saying that you'll be
23 seeking costs and fees regardless of whether a
24 renewed motion is filed, or are you saying in the

1 event that a renewed motion is coming and that we
2 grant the authorization to file that motion?

3 MR. STEIN: Yeah, I think the latter is
4 the most accurate, although I can reserve some
5 judgment on that. But I think if this does go
6 forward, because it's truly baseless, we would
7 ask under 42.11D2 that we be given attorney's
8 fees and reasonable costs for having to deal with
9 this because it's totally unfounded. But yes,
10 it's largely the latter. The only reason I'm
11 reserving judgment is because Your Honors will
12 remember that when we asked for two rounds of
13 motions on discovery, first, as routine
14 discovery, then as additional discovery for
15 petitioner's inconsistencies with the EPO
16 procedure, we used the proper procedures at the
17 PTAB. We went through, you know, everything we
18 needed to, and then what ended up happening is
19 petitioner's counsel just told us outside the
20 motion process, "Oh, by the way, we were behind
21 the EPO opposition," which is all we had asked
22 for from the beginning. So the only reason I'm
23 reserving judgment is because I feel like, if
24 they're going to go for this unfounded sanctions

1 motion, I would want to go back to consider
2 whether what we had to go through to request
3 those two different rounds of motions for, you
4 know, proper discovery that we were entitled to,
5 whether there should be some fees and costs for
6 that. So that's the only reason I wanted to
7 reserve judgment on the former question that you
8 asked.

9 MS. LOUGHRAN: Okay, thank you.

10 MR. STEIN: Yeah, thank you.

11 THE COURT: This is Judge Fitzpatrick
12 again. I should have said this in the very
13 beginning, but this transcript, this call relates
14 to two AIA proceedings. I'm going to list them
15 here, TGR2025-00023 and IPR2025-00440.

16 Are there any other questions?

17 MR. STEIN: This is Mr. Stein. Nothing
18 from patent owner.

19 MR. MCKEOWN: No questions.

20 MR. STEIN: Thank you, Your Honor. We
21 appreciate your time today.

22 THE COURT: Okay, we are adjourned.
23 Thank you.

24

1 (Whereupon, the hearing was adjourned
2 at 1:17 p.m.)
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1 C E R T I F I C A T E

2 COMMONWEALTH OF MASSACHUSETTS

3 COUNTY OF NORFOLK, SS

4 I, Michele DeCoste, a Professional Court
5 Reporter and Notary Public in and for the
6 Commonwealth of Massachusetts, do hereby certify:

7 That the foregoing transcript is a true and
8 correct record of the testimony/statements given
9 by the said witnesses and/or attorneys at the
10 time and place specified hereinbefore.

11 I FURTHER CERTIFY that I am neither a
12 relative nor employee of nor counsel for any of
13 the parties, nor am I financially interested
14 directly or indirectly in the outcome of this
15 action.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and Notarial Seal this 30th day of April
18 2026.

19

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21

22

23

24

Michele DeCoste



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