

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CONJUPRO BIOTHERAPEUTICS, INC.,
Petitioner,

v.

ASCLETIS PHARMA CHINA CO. LTD.,
Patent Owner.

Case No. PGR2025-00057
Patent No. 12,234,236
Title: GLP-1R agonist and therapeutic method thereof

PETITIONER'S SUPPLEMENTAL BRIEF

Patent Owner’s eleventh-hour challenge to Su’s prior art status should be rejected. Patent Owner never questioned Su’s priority date during briefing—instead, it expressly conceded that “the disclosure of Su II is prior art” and cited exclusively to Su II throughout its Response and Sur-Replies. Having litigated this case on the premise that Su II’s disclosures are prior art and include the specific disclosures in question, Patent Owner should not be able to now reverse course.

On the merits, Su qualifies as prior art under *Dental Monitoring*. The Federal Circuit requires only that the provisional application provide written description support for “at least one” of the reference patent’s claims. Su II does far more than that—it has full support for multiple claims and discloses the exact compounds that Su claims and that Petitioner relies upon. Patent Owner’s only argument is that because Su claims these compounds within a species Markush group, the entire claim somehow loses priority. That reading finds no support in *Dental Monitoring*, defies the statutory text, and would produce absurd results: a patent owner could escape invalidation by pointing to the breadth of the prior applicant’s claim drafting, even when the specific prior art compound is indisputably disclosed and claimed.

In any event, the Challenged Claims are unpatentable regardless of Su’s status. Grounds 2 and 3—which do not or need not rely on Su—independently render claims 1–9, 12–17, and 22–25 obvious. The Board need not reach Su to find these claims unpatentable.

I. ARGUMENT

a. Patent Owner Has Waived Any Argument Related to *Dental Monitoring* and Conceded Su and Su II Constitute Prior Art In This Proceeding.

By failing to raise any arguments that Su was not entitled to the effective date of Su II until after all briefing had been submitted, and otherwise conceding Su is prior art, Patent Owner should not be allowed to argue otherwise. The Federal Circuit in “*Dynamic Drinkware* [was] very clear[:] The petitioner [] does not have the burden of producing evidence that the effective date of an asserted reference patent relates back to its claimed provisional application until ***after a patentee challenges the prior art status of the asserted reference.***” *Innovative Growers Equipment, Inc. v. Pipp Mobile Storage Systems, Inc.*, IPR2022-00893, 2023 WL 7107846, at *18 (PTAB Oct. 27, 2023) (citing and quoting *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375, 1381 (Fed. Cir. 2015)). By failing to raise this argument in its Response, Patent Owner has waived this argument. *See Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1373 (Fed. Cir. 2023) (holding failure to raise an argument in a response results in waiver of said argument).

Moreover, Patent Owner acknowledges that Petitioner relies on both Su (the PCT) and Su II (the provisional application) and readily ***admits*** that “the disclosure of ***Su II is prior art*** to some of the Challenged Claims” and therefore “cites to Su II” in its Response but “refers to it as Su.” (Paper 26 at 12, n.2 (emphasis added).)

Therefore, Patent Owner concedes that Su II is prior art. Further, Patent Owner tacitly admits Su II contains all relevant disclosures because it cites exclusively to Su II (Ex. 1007), and never to Su (Ex. 1005 (non-English) or Ex. 1031 (English translation)), throughout its Response and Sur-Replies. (*See generally* Papers 26 and 39.) Because it is undisputed that Su II constitutes prior art and contains the invalidating disclosures, this inquiry is unwarranted.

b. Su Qualifies As Prior Art Under *Dental Monitoring*.

Su is prior art because its provisional application, Su II, enables a person of ordinary skill to practice at least one claim of Su. *See Dental Monitoring SAS v. Align Technology, Inc.*, 184 F.4th 1376, 1382 (Fed. Cir. 2026). Under 35 U.S.C. § 119(e)(1), the specification of a provisional application must comply with § 112(a), i.e., contain sufficient written description “to enable an ordinary skilled artisan to practice the invention claimed in the non-provisional application.” Different inventions can be entitled to different priority dates. *See, e.g., Nikon Corp. v. Carl Zeiss AG*, IPR2018-00686, 2018 WL 4691260, at *7 (P.T.A.B. Sept. 27, 2018); *see also* 35 U.S.C. § 100(i)(1)(B) (effective filing date is determined with respect to each “such invention”).

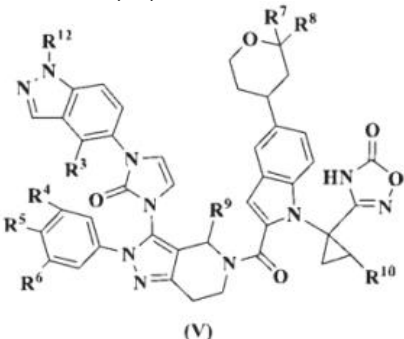
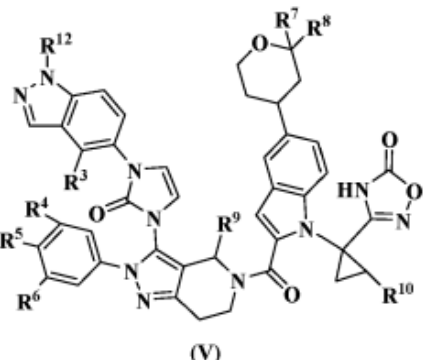
The Federal Circuit has long held that “the level of detail required to satisfy the written description requirement varies” and there are no “bright-line rules” but that written description support may be shown by “structure[s], formula[s], chemical

name[s], physical properties, or other properties.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). Here, Su II provides enough support to treat Su as prior art.

i. Su’s Claims Are Supported By Su II’s Disclosures.

Multiple of Su’s claims are fully supported in Su II’s disclosures, which also include representative examples on the synthesis of various target compounds and their use thereby enabling a POSA to make and use the claimed compounds.

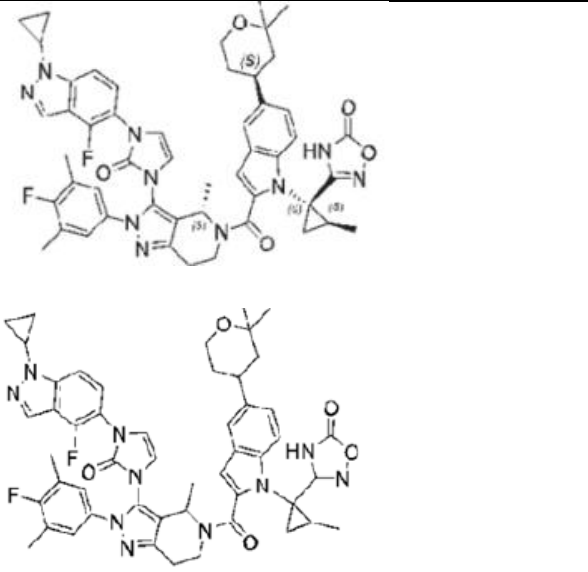
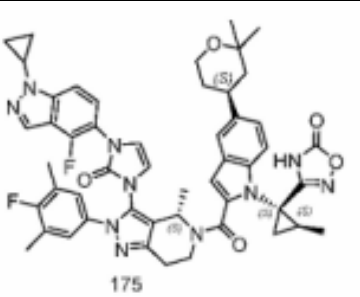
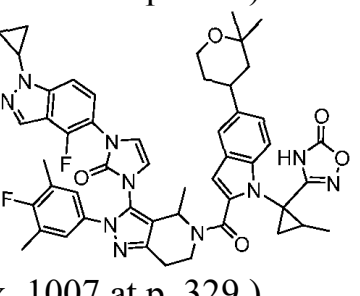
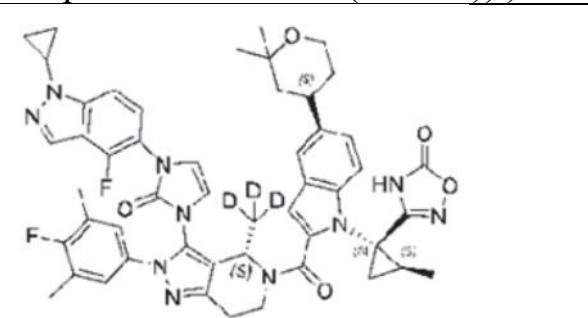
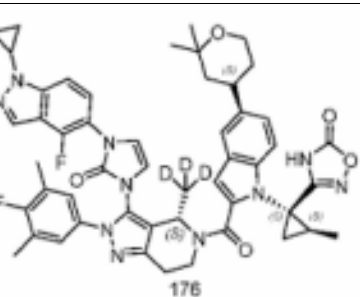
For example, Claim 5 of Su is ***fully supported*** by Su II, which discloses Formula V of Su and all its substituents:

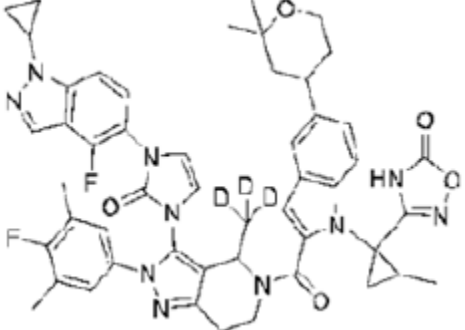
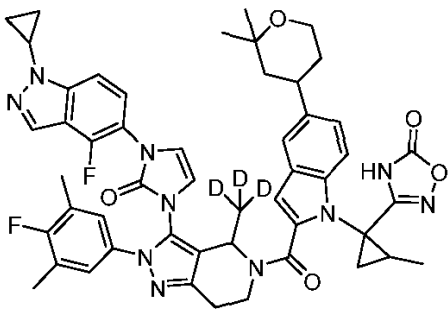
Su, Claim 5:	Su II, Claim 11 and pages 29–35:
The compound according to claim 1, a prodrug thereof, a stereoisomer thereof or a pharmaceutically acceptable salt thereof, wherein the general formula (XIX) is further shown as general formula (V):  (V)	“A compound represented by general formula (V), or a stereoisomer or a pharmaceutically acceptable salt thereof:  (V)

(Compare Ex. 1031 at 250 with Ex. 1007 at 321; compare also Ex. 1031 at 250–252 (providing list of substitutes) with Ex. 1007 at 321–326 and 29–35 (providing list of same substitutes and identifying embodiments of various substituents recited in

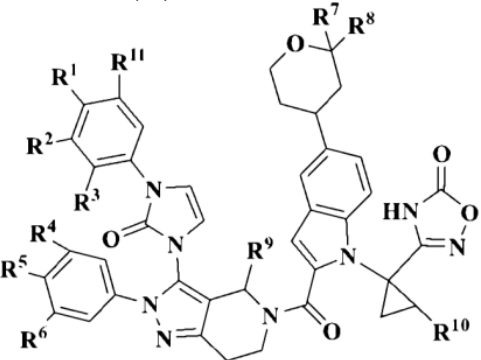
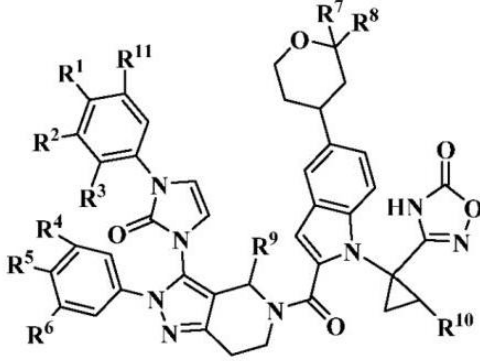
Claim 5 of Su).)

Likewise, Claim 7 of Su is a species Markush claim reciting a list of alternatively useable compounds. *See* Ex. 1005 at 254–266 (claim 7, listing several alternatives). Su Claim 7 and Su II both include compounds 175, 176, and their respective non-stereoisomerically pure counterparts—at issue here:

Su Claim 7	Su II Disclosure
 (Ex. 1031 at p. 254 (Claim 7; 5th compound in first row (with stereochemistry indicators) and 2nd compound second row (without)).)	 175 (Ex. 1007 at p. 328.)  (Ex. 1007 at p. 329.)
	 176 (Ex. 1007 at p. 328.)

Su Claim 7	Su II Disclosure
 (Ex. 1031 at p. 254 (Claim 7; 1st compound in second row (with stereochemistry indicators) and 3rd compound second row (without)).)	 (Ex. 1007 at p. 329.)

Further, Formula (II) in claim 10 of Su finds **full support** in Formula (II) in Claim 4 and pages 14–19 of Su II:

Su, Claim 10:	Su II, Claim 4 and pages 14–19:
The compound according to claim 8, a prodrug thereof, a stereoisomer thereof or a pharmaceutically acceptable salt thereof, wherein the general formula (XVI) is further shown as general formula (II):  (II)	“A compound represented by general formula (II), or a stereoisomer or a pharmaceutically acceptable salt thereof:  (II)

(Compare Ex. 1031 at 272 with Ex. 1007 at 305; compare also Ex. 1031 at 272–273 (providing list of substitutes) with Ex. 1007 at 305–308 and 14–19 (providing list of

same substitutes and identifying embodiments of various substituents recited in claim 10 of Su).)

Accordingly, Su II provides written description support for at least claims 5, 7, and 10, including by fully disclosing and enabling (i) the claimed compounds—including compounds 175, 176 and their respective non-stereoisomerically pure counterparts—in claim 7 and (ii) the genus formulas of claims 5 and 10 and the related substituents.

ii. Su II's Disclosures Satisfy *Dental Monitoring's* Objectives.

To the extent Patent Owner argues further support is required for the species Markush group of claim 7 of Su, this would be contrary to the intent of the law. The Federal Circuit has explained that the written description requirement for prior art priority prevents a “patent challenger” from “backdat[ing] prior art by claiming priority from an earlier application that would not have supported a patent on the claimed invention.” *Dental Monitoring*, 2026 WL 2291181, at *3 (citing *Dynamic Drinkware*, 800 F.3d at 1381–82). This concern about “uncertainty about what constitutes prior art” is absent where, as here, the provisional application indisputably discloses the very subject matter at issue, e.g., compounds 175 and 176, and the only dispute concerns whether those compounds' inclusion in a broader Markush claim affects their prior art status.

Holding that Su cannot rely on its provisional filing date under these

circumstances would produce illogical results. For example, the same applicant, Su, could conceivably file a continuation claiming a smaller subset of the Markush group, e.g., only compounds 175 and 176. This continuation could thus be entitled to Su II's filing date. It would be anomalous for the patent system to treat compounds—disclosed in Su II and claimed in Su—as not prior art solely because of their inclusion in a broader species Markush claim, which could be rewritten and found to be prior art in a later application. Moreover, there is no question that a POSA had possession of these claimed compounds as of Su II's filing.

This result would be particularly untenable in the anticipation context if compound 175 or 176 were relied upon as anticipating prior art. That is, if Su did not constitute prior art despite unquestionably disclosing a compound in a prior provisional and claiming it along with other compounds in a later non-provisional, a patent owner could overcome an anticipation objection. Meanwhile, Su's applicant could simultaneously pursue the same compound. Such a rule would frustrate the very purpose of the written description requirement, which is to ensure prior possession of the invention as of a given priority date—not to create a loophole where indisputably disclosed compounds lose their prior art effect due to a species Markush claim technicality. In addition, instead of focusing on the earliest written description support for a concept or disclosure, prior art status would instead be subject to the particular styles and choices of unknown claim draftsmen and women.

Dental Monitoring does not require a different result. Written description support in an earlier provisional for claimed subject matter, and specifically for the subject matter relied upon for an invalidity challenge, has been shown.

c. If Su Is Not Prior Art, Which It Is, the Claims of the '236 Patent Remain Unpatentable.

Even if Su were found not to qualify as prior art—which it should—the Challenged Claims remain unpatentable under the remaining grounds. Su's disqualification would render Grounds 1 and 4 no longer available. However, Grounds 2 and 3 would still demonstrate that claims 1–9, 12–17, and 21–25 are obvious and therefore unpatentable.

As set forth in Ground 2, (Pet. at 83–105), Yoshino demonstrates a structure-activity relationship which supports ring replacement for methyl on indazole nitrogen and removal of the dimethyl group from the tetrahydropyran ring. (Pet. at 83–100; EX1002, ¶¶200–226.) Kawai provides the structural basis for GLP-1 receptor activation by orforglipron, demonstrating that the ligand-binding pocket adjacent to the methyl group is spacious and hydrophobic, capable of accommodating bulkier substituents without compromising receptor binding. (Pet. at 84–86; EX1004, FIG. 11.) And Talele teaches that cyclopropyl ring replacement for small alkyls is a well-established strategy in medicinal chemistry for enhancing metabolic stability and improving pharmacokinetic properties. (Pet. at 91–94;

EX1009, 1–2.) This ground does not rely on Su at all, and thus remains fully intact.

Ground 3 also remains partially viable. While Ground 3 relies on Su in combination with other references to render claims 1–4 and 21–25 obvious with respect to Compound 65, the obviousness of Compound 65 is ultimately grounded in the combined teachings of Yoshino, Kawai, Talele, Meng, Patel, and Ren. (Pet. at 105–114.) To the extent Ground 3 builds upon the Compound 19 analysis from Ground 1, that same analysis is independently supported by Yoshino and the other non-Su references in Ground 2. (Pet. at 94–97.) Meng, Patel, and Ren—none of which depend on Su—provide the motivation to introduce a nitrogen atom into the aromatic ring, leading directly to Compound 65. (Pet. at 106–112; EX1002, ¶¶275–283.)

Accordingly, even in the contingent scenario where Su is found not to qualify as prior art, the Challenged Claims—claims 1–9, 12–17, and 21–25—remain unpatentable over the surviving grounds of invalidity.

II. CONCLUSION

For the reasons stated herein, Su should be considered prior art and the asserted claims should be found unpatentable.

Dated: September 8, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), I hereby certify that on September 8, 2026, I caused a true and correct copy of the foregoing **Petitioner's Supplemental Brief** to be served by electronic mail, as authorized by Patent Owner, at the following email addresses:

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