

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

INCYTE CORPORATION.  
Petitioner,  
v.

CONCERT PHARMACEUTICALS, INC.,  
Patent Owner

---

Case IPR2017-01256  
Patent No. 9,249,149

---

**PATENT OWNER'S NOTICE OF APPEAL**

Pursuant to 35 U.S.C. §§ 141-144 and 319, and 37 C.F.R. §§ 90.2 and 90.3, notice is hereby given that Patent Owner Concert Pharmaceuticals, Inc. appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered April 8, 2019 (Paper 119) in IPR2017-01256 (Exhibit A), and all prior and interlocutory rulings related thereto or subsumed therein.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner further indicates that the issues on appeal include, but are not limited to: (1) whether the Board erred in determining that Petitioner established by a preponderance of the evidence that claims 1-15 of U.S. Patent No. 9,249,149 are unpatentable as obvious under 35 U.S.C. § 103, including, but not limited to, whether the Board erred in (a) concluding that the Concert Backgrounder is a prior art printed publication; (b) concluding that the prior art would have motivated a skilled artisan to deuterate the compound ruxolitinib in order to make the claimed compounds, (c) concluding that the prior art would have provided a skilled artisan with a reasonable expectation of success, (d) concluding that the objective indicia of long-felt need for and unexpected results of the claimed invention do not support a finding of nonobviousness, and (e) making any and all other factual findings or legal conclusions relevant to its obviousness determination; (2) whether the Board erred in denying Patent Owner's Contingent Motion to Amend; (3) whether the Board's decision was arbitrary and capricious; and (4) whether the Board erred in any

finding or determination supporting or related to those issues, as well as all other issues decided adversely to Patent Owner in any orders, decisions, rulings, and opinions.

Pursuant to 37 C.F.R. § 90.3, this Notice of Appeal is timely, having been filed within 63 days after the date of the Final Written Decision.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), a copy of this Notice of Appeal is being filed simultaneously with the Patent Trial and Appeal Board, the Clerk's Office for the United States Court of Appeals for the Federal Circuit, and the Director of the Patent and Trademark Office.

Dated: June 7, 2019

Respectfully submitted,

/Marta E. Delsignore/

Marta E. Delsignore (Reg. No. 32,689)

Goodwin Procter LLP

The New York Times Building

620 Eighth Avenue

New York, NY 10018-1405

mdelsignore@goodwinprocter.com

Tel.: 212.813.8800

Fax.: 212.355.3333

*Counsel for Patent Owner*

**CERTIFICATE OF FILING AND SERVICE**

Pursuant to 37 C.F.R. §§ 90.2(a)(1) and 104.2(a), I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board's E2E system, a true and correct original version of the foregoing PATENT OWNER'S NOTICE OF APPEAL is being filed by Express Mail on June 7, 2019, 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  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 90.2(a)(2) and Federal Circuit Rule 15(a)(1), and Rule 52(a), (e), I hereby certify that a true and correct copy of the foregoing PATENT OWNER'S NOTICE OF APPEAL is being filed in the United States Court of Appeals for the Federal Circuit on this day, June 7, 2019, and that the filing fee is being paid electronically using pay.gov.

I further certify that the foregoing PATENT OWNER'S NOTICE OF APPEAL was served electronically via e-mail, as agreed to by counsel, on June 7, 2019, on the following counsel for Petitioner:

Thomas L. Irving  
Mark J. Feldstein  
Michael J. Flibbert  
Drew D. Christie  
C. Collette Corser  
Rachel L. Emsley  
Trenton A. Ward  
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.  
901 New York Avenue, NW  
Washington, DC 20001-4413  
tom.irving@finnegan.com  
mark.feldstein@finnegan.com  
michael.flibbert@finnegan.com  
drew.christie@finnegan.com  
collette.corser@finnegan.com  
rachel.emsley@finnegan.com  
trenton.ward@finnegan.com

/Marta E. Delsignore/  
Marta E. Delsignore (Reg. No. 32,689)