

PTAB Denies Review Of Univ. Of Texas System Cancer Patent

By **Ryan Lynch**

Law360 (November 27, 2023, 7:35 PM EST) -- The Patent Trial and Appeal Board has denied a petition by biotechnology company Microbiotica seeking post-grant review of a cancer treatment patent held by the University of Texas System.

U.K.-based Microbiotica failed to demonstrate that it would show it is "more likely than not" that any of the challenged claims were unpatentable, the PTAB said on Nov. 21. Microbiotica challenged all 19 claims of the patent, which covers methods of treating cancer by modulating the body's microorganisms, known as the microbiome.

The MD Anderson Cancer Center at the University of Texas developed the patent, which was issued on July 26, 2022.

On April 26, just as the nine-month review window was closing, Microbiotica filed its post-grant review petition on the basis of a lack of written description, lack of enablement, indefiniteness and obviousness over earlier inventions.

However, the PTAB found that Microbiotica did not provide "sufficient analysis" of what a person of ordinary skill "would have known from the state of the art for the written description ground." Microbiotica's analysis was "divorced from the full disclosure" of the patent, and the University of Texas had no obligation to redescribe "what was already known," the PTAB said.

Although Microbiotica cited several earlier inventions to argue that the University of Texas patent was obvious, the PTAB did not find these arguments compelling. In particular, the board said Microbiotica failed to show that a person of ordinary skill "would have a reason to combine" the earlier inventions to arrive at the cancer center's patented technology.

Microbiotica did provide reasons why it thought a person of ordinary skill would have combined the earlier inventions. However, the PTAB said the biotech company "employed impermissible hindsight" to justify its position. For example, one of the cited inventions related to cancer treatment in general but not the treatment of specific cancers, the board wrote.

Attorneys for the University of Texas Board of Regents declined to comment. Attorneys for Microbiotica did not respond to a request for comment.

The patent-at-issue is U.S. Patent No. 11,395,838.

Administrative Patent Judges Jeffrey N. Fredman, Susan L.C. Mitchell and Jamie T. Wisz sat on the panel for the PTAB.

Microbiotica is represented by Patrick D. McPherson, Thomas J. Kowalski and Christopher S. Kroon of Duane Morris LLP.

The University of Texas System is represented by Eldora Ellison, Jeremiah Frueauf and Olga Partington of Sterne Kessler Goldstein & Fox PLLC.

The proceeding is Microbiotica Ltd. v. Board of Regents, The University of Texas System, PGR2023-00026, at the Patent Trial and Appeal Board.

--Editing by Daniel King.

All Content © 2003-2023, Portfolio Media, Inc.