

PTAB Nixes Patent Covering Jublia® in IPR Proceeding, Resulting in Victory for Rothwell Figg Client Acrux

The PTAB invalidated the basic patent covering the nail fungus drug, Jublia®, which is marketed by Valeant Pharmaceuticals. The firm's client Acrux, an Australian pharmaceutical company, challenged the validity of all claims of U.S. patent 7,214,506, which covers a method of treating onychomycosis (fungal infection of nail tissues) by topically administering Jublia®'s active ingredient, the antifungal drug, efinaconazole. The PTAB instituted *inter partes* review (IPR2017-00190) and issued its Final Written Decision a year later.

The PTAB accepted Acrux's argument that the claims are unpatentable over a combination of prior art disclosing topical formulations of antifungal agents for treating onychomycosis together with prior art disclosing that efinaconazole was known to be a highly potent antifungal compound with a broad spectrum activity that is not inactivated by keratin, a main component of skin and nails. The PTAB also concluded that "although Patent Owner showed a presumption of nexus between secondary considerations concerning Jublia® and the subject matter of the claims, Petitioner rebutted that presumption showing that the secondary considerations evidence is not commensurate in scope with the challenged claims." Further, the Board held that "Patent Owner failed to persuasively show unexpected results, commercial success, industry praise, and long-felt, but unmet need for its product Jublia®. Even if such evidence of secondary considerations were shown, it would not outweigh the strong evidence presented [by Acrux]."

Acrux was represented in this case by Rothwell Figg attorneys E. Anthony Figg and Aydin Harston.

Read more in IP Law360's write-up of the case, which can be found [here](#).

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