UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE APPEALS REVIEW PANEL OF THE
PATENT TRIAL AND APPEAL BOARD

Ex parte NICOLAS BAURIN, CHRISTIAN BEIL, CARSTEN CORVEY, CHRISTIAN LANGE, DANXI LI, VINCENT MIKOL, ANKE STEINMETZ, and ERCOLE RAO

Appeal 2024-002920
Application 17/135,529
Technology Center 1600

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office*, VALENCIA MARTIN WALLACE, *Acting Commissioner for Patents*, and KALYAN K. DESHPANDE, *Chief Administrative Patent Judge*.

SQUIRES, *Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office*.

ORDER CONVENING APPEALS REVIEW PANEL AND GRANTING *SUA SPONTE* REHEARING

An Appeals Review Panel ("ARP") is convened in this *ex parte* appeal and the Board members identified on this Order will serve as the ARP for this case.

We have determined to grant rehearing *sua sponte* to review the Board's Decision on Appeal and Decision on Request for Rehearing in the above-captioned case. The review will focus on the Board's reversal of the rejections of claims 1–18 for obviousness-type double patenting ("OTDP").

We authorize Appellant[1] to file an additional brief of no more than ten pages, limited to addressing OTDP, due on March 27, 2026. Additionally, any *amicus curiae* are authorized to submit a brief of no more than ten pages to PTABAppealsAdmin@uspto.gov, limited to the same issue, and due on March 27, 2026.

In briefing the OTDP issue, we will benefit from Appellant and amici addressing the following: (1) the applicability, if any, of *Allergan USA, Inc. v. MSN Laboratories Private Ltd.*, 111 F.4th 1358 (Fed. Cir. 2024), to the facts of this appeal, and consideration of what constitutes "first-filed" for OTDP purposes under facts different than those presented in *Allergan*; (2) whether examiners should determine projected expiration dates to support OTDP rejections during prosecution; and (3) whether the risk of separate ownership and preventing potential harassment by separate owners of claims to obvious variants of an invention is an independent basis that supports an OTDP rejection during prosecution.

[1] "Appellant" refers to "applicant" as defined in 37 C.F.R. § 1.42.