

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BIOCON BIOLOGICS INC.,  
Petitioner,

v.

REGENERON PHARMACEUTICALS, INC.,  
Patent Owner.

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*Inter Partes* Review No.: IPR2024-00298

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U.S. Patent No. 11,253,572  
Filed: June 21, 2021  
Issued: February 22, 2022  
Inventor: George D. Yancopoulos

Title: USE OF A VEGF ANTAGONIST TO TREAT  
ANGIOGENIC EYE DISORDERS

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**PETITION FOR *INTER PARTES* REVIEW  
OF U.S. PATENT NO. 11,253,572**

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## TABLE OF AUTHORITIES

### Cases

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<i>In Re: Copaxone Consol. Cases,</i> 906 F.3d 1013 (Fed. Cir. 2018).....	61
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<i>Los Angeles Biomedical Research Institute at Harbor-UCLA Medical Center v. Eli Lilly &amp; Co.</i> , 849 F.3d 1049 (Fed. Cir. 2017).....	61, 62, 63
<i>Minton v. Nat’l Ass’n. of Sec. Dealers, Inc.</i> , 336 F.3d 1373 (Fed. Cir. 2003).....	62
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## Statutes

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### **Other Authorities**

Katherine K. Vidal, Interim Procedure for Discretionary Denials (June 21, 2022).....	69
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## EXHIBIT LIST

Exhibit	Description
1001	U.S. Patent No. 11,253,572
1002	Expert Declaration of Dr. Edward Chaum in Support of Petition for <i>Inter Partes</i> Review of Patent No. 11,253,572, dated April 27, 2023 (“Chaum Decl.”)
1003	Edward Chaum <i>Curriculum Vitae</i>
1004	Institution Decision in <i>Apotex Inc. v. Regeneron Pharmaceuticals, Inc.</i> , IPR2022-01524. (“Apotex ’572 ID”)
1005	Press Release, “Enrollment Completed in Regeneron and Bayer Healthcare Phase 3 Studies of VEGF Trap-Eye in Neovascular Age-Related Macular Degeneration (Wet AMD) (September 14, 2009),” available at: <a href="https://newsroom.regeneron.com/news-releases/news-release-details/enrollment-completed-regeneron-and-bayer-healthcare-phase-3">https://newsroom.regeneron.com/news-releases/news-release-details/enrollment-completed-regeneron-and-bayer-healthcare-phase-3</a> (“2009 Press Release”)
1006	Press Release, “Regeneron and Bayer Report Positive Results for VEGF Trap-Eye in Phase 3 Study in Central Retinal Vein Occlusion (CRVO) and in Phase 2 Diabetic Macular Edema (DME),” Exhibit 99.1 to Regeneron 8-K filed on December 20, 2010, available at: <a href="https://yahoo.brand.edgar-online.com/displayfilinginfo.aspx?FilingID=7617341-6436-23571&amp;type=sect&amp;TabIndex=2&amp;companyid=5036&amp;ppu=%252fdef%E2%80%A6">https://yahoo.brand.edgar-online.com/displayfilinginfo.aspx?FilingID=7617341-6436-23571&amp;type=sect&amp;TabIndex=2&amp;companyid=5036&amp;ppu=%252fdef%E2%80%A6</a> (“December 2010 Press Release”)
1007	Press Release, “Bayer and Regeneron Report Positive Top-Line Results of Two Phase 3 Studies with VEGF Trap-Eye in Wet Age-related Macular Degeneration,” Exhibit 99.1 to Regeneron 8-K filed on November 22, 2010, available at: <a href="https://yahoo.brand.edgaronline.com/displayfilinginfo.aspx?FilingID=7572010-8611-26486&amp;type=sect&amp;TabIndex=2&amp;companyid=5036&amp;ppu=%252fdef%E2%80%A6">https://yahoo.brand.edgaronline.com/displayfilinginfo.aspx?FilingID=7572010-8611-26486&amp;type=sect&amp;TabIndex=2&amp;companyid=5036&amp;ppu=%252fdef%E2%80%A6</a> (“November 2010 Press Release”)
1008	Apotex Petition for IPR filed in <i>Apotex Inc. v. Regeneron Pharmaceuticals, Inc.</i> , IPR2022-01524 (Paper 1) (“Apotex Petition”)
1009	Dixon JA, Oliver SC, Olson JL, Mandava N. VEGF Trap-Eye for the treatment of neovascular age-related macular degeneration. <i>Expert Opin Investig Drugs.</i> 2009;18(10):1573-1580. (“Dixon”)
1010	Major JC et al., “DA VINCI: DME and VEGF Trap-Eye: Investigation

	of Clinical Impact: Phase 2 Study in Patients With Diabetic Macular Edema (DME), ARVO Annual Meeting Abstract (April 2010), Vol. 51, Issue 13, available at: <a href="https://iovs.arvojournals.org/article.aspx?articleid=2375028">https://iovs.arvojournals.org/article.aspx?articleid=2375028</a> (“2010 ARVO Abstract”)
1011	Final Written Decision in <i>Mylan Pharmaceuticals Inc. v. Regeneron Pharmaceuticals, Inc.</i> , IPR2021-00881 (Paper 94) (“338 FWD”)
1012	Institution Decision in <i>Mylan Pharmaceuticals Inc. v. Regeneron Pharmaceuticals, Inc.</i> , IPR2022-01225 (Paper 21) (“681 ID”)
1013	Institution Decision in <i>Mylan Pharmaceuticals Inc. v. Regeneron Pharmaceuticals, Inc.</i> , IPR2022-01226 (Paper 22) (“601 ID”)
1014	Certified Prosecution History of U.S. Patent No. 11,253,572 (“572 patent PH”)
1015	Adis R&D Profile, Aflibercept: AVE 0005, AVE 005, AVE0005, VEGF Trap - Regeneron, VEGF Trap (R1R2), VEGF Trap-Eye. <i>Drugs R D.</i> 2008;9(4):261-269. (“Adis”)
1016	Hecht, “Ophthalmic Preparations,” Remington: The Science and Practice of Pharmacy, Volume II, 19th edition, Chapter 89 (1995). (“Hecht”)
1017	WO 2006/047325 A1 (“Shams”)
1018	Elman MJ, et al., Randomized trial evaluating ranibizumab plus prompt or deferred laser or triamcinolone plus prompt laser for diabetic macular edema. <i>Ophthalmology.</i> 2010 Jun;117(6):1064-1077.e35. (“Elman 2010”)
1019	Elman MJ, et al., Randomized trial evaluating ranibizumab plus prompt or deferred laser or triamcinolone plus prompt laser for diabetic macular edema. <i>Ophthalmology.</i> 2010 Jun;117(6):1064-1077.e35, published April 28 2010, available at <a href="https://www.aaojournal.org/article/S0161-6420(10)00243-5/fulltext">https://www.aaojournal.org/article/S0161-6420(10)00243-5/fulltext</a> (“Elman AAO Website”)
1020	Authenticating Affidavit and the July 13, 2010 Web Archive of the CATT Patient Eligibility Criteria, available at <a href="https://web.archive.org/web/20100713035617/http://www.med.upenn.edu/cpob/studies/documents/CATTEligibilityCriteria_000.pdf">https://web.archive.org/web/20100713035617/http://www.med.upenn.edu/cpob/studies/documents/CATTEligibilityCriteria_000.pdf</a> , attached as Exhibit B (“CATT Study”).
1021	Regillo CD, Brown DM, Abraham P, et al. Randomized, double-masked, sham-controlled trial of ranibizumab for neovascular age-related macular degeneration: PIER Study year 1. <i>Am J Ophthalmol.</i>

	2008;145(2):239-248. (“PIER Study”).
1022	Comparison of Age-related Macular Degeneration Treatments Trials: Lucentis-Avastin Trial (NCT00593450), available at: <a href="https://clinicaltrials.gov/ct2/show/NCT00593450">https://clinicaltrials.gov/ct2/show/NCT00593450</a> (“NCT-450”)
1023	Regillo CD, Brown DM, Abraham P, et al. Randomized, double-masked, sham-controlled trial of ranibizumab for neovascular age-related macular degeneration: PIER Study year 1. Am J Ophthalmol. 2008;145(2):239-248, published December 3, 2007, available at <a href="https://www.ajo.com/article/S0002-9394(07)00881-1/fulltext">https://www.ajo.com/article/S0002-9394(07)00881-1/fulltext</a> (“PIER AJO Website”)
1024	History of Changes for Study: A Study of rhuFab V2 (Ranibizumab) in Subjects With Subfoveal Choroidal Neovascularization Secondary to Age-Related Macular Degeneration (AMD) (NCT00090623), available at: <a href="https://clinicaltrials.gov/ct2/history/NCT00090623?V_1=View#StudyPageTop">https://clinicaltrials.gov/ct2/history/NCT00090623?V_1=View#StudyPageTop</a> (“NCT-623”)
1025	ClinicalTrials.gov Background, available at: <a href="https://clinicaltrials.gov/ct2/about-site/background">https://clinicaltrials.gov/ct2/about-site/background</a> (“ClinicalTrials.gov Background”)
1026	ClinicalTrials.gov About the Results Database, available at: <a href="https://clinicaltrials.gov/ct2/about-site/results">https://clinicaltrials.gov/ct2/about-site/results</a> (“ClinicalTrials.gov About the Results Database”)
1027	Press Release, “Regeneron Reports Positive Phase 1 Data for the VEGF TRAP in Age-Related Macular Degeneration,” Exhibit 99(a) to Regeneron 8-K filed on May 2, 2006, available at: <a href="https://yahoo.brand.edgaronline.com/displayfilinginfo.aspx?FilingID=4380124-5423-15279&amp;type=sect&amp;TabIndex=2&amp;companyid=5036&amp;ppu=%252fdef%20%80%A6">https://yahoo.brand.edgaronline.com/displayfilinginfo.aspx?FilingID=4380124-5423-15279&amp;type=sect&amp;TabIndex=2&amp;companyid=5036&amp;ppu=%252fdef%20%80%A6</a> (“May 2006 Press Release”)
1028	Nguyen QD et al. A phase I study of intravitreal vascular endothelial growth factor trap-eye in patients with neovascular age-related macular degeneration. Ophthalmology. 2009 Nov;116(11):2141-8.e1. (“Nguyen 2009”)
1029	Press Release, “Bayer and Regeneron Dose First Patient in Second Phase 3 Study for VEGF Trap-Eye in Wet Age-Related Macular Degeneration” published on May 8, 2008, available at: <a href="https://investor.regeneron.com/node/10561/pdf">https://investor.regeneron.com/node/10561/pdf</a> (“May 2008 Press Release”)
1030	Do DV et al., “Results of a Phase I Study of Intravitreal VEGF Trap

	in Subjects With Diabetic Macular Edema: The CLEAR-IT DME Study,” ARVO Annual Meeting Abstract (May 2007), Vol. 48, Issue 3, available at: <a href="https://iovs.arvojournals.org/article.aspx?articleid=2384099">https://iovs.arvojournals.org/article.aspx?articleid=2384099</a> (“2007 ARVO Abstract”)
1031	Do DV et al., The DA VINCI Study: phase 2 primary results of VEGF Trap-Eye in patients with diabetic macular edema. <i>Ophthalmology</i> . 2011 Sep;118(9):1819-26 (published online on May 5, 2011). (“Do 2011”)
1032	Randolph and Jones, “Surfactant-Protein Interactions,” <i>Rational Design of Stable Protein Formulations</i> , edited by Carpenter and Manning, vol. 13, 2002 (“Randolph”)
1033	Fraser et al., <i>Journal of Clinical Endocrinology and Metabolism</i> , February 2005, 90(2):1114-1122 (“Fraser”)
1034	Lucentis ® Original Approved Labeling (2006), available at: <a href="https://www.accessdata.fda.gov/drugsatfda_docs/nda/2006/125156s0000_Lucentis_Prntlbl.pdf">https://www.accessdata.fda.gov/drugsatfda_docs/nda/2006/125156s0000_Lucentis_Prntlbl.pdf</a>
1035	Holash J, Davis S, Papadopoulos N, et al. VEGF-Trap: a VEGF blocker with potent antitumor effects. <i>Proc Natl Acad Sci U S A</i> . 2002;99(17):11393-11398 (“Holash”)
1036	Rudge JS, Thurston G, Davis S, et al. VEGF trap as a novel antiangiogenic treatment currently in clinical trials for cancer and eye diseases, and VelociGene-based discovery of the next generation of angiogenesis targets. <i>Cold Spring Harb Symp Quant Biol</i> . 2005;70:411- 418 (“Rudge 2005”)
1037	Gomez-Manzano C, Holash J, Fueyo J, et al. VEGF Trap induces antiglioma effect at different stages of disease. <i>Neuro Oncol</i> . 2008;10(6):940-945. (“Gomez-Manzano”)
1038	Heier JS, et al., Intravitreal aflibercept (VEGF trap-eye) in wet age-related macular degeneration. <i>Ophthalmology</i> . 2012;119(12):2537- 2548. (“Heier 2012”)
1039	Heier JS, et al., CLEAR-IT 2 Investigators. The 1-year results of CLEAR-IT 2, a phase 2 study of vascular endothelial growth factor trapeye dosed as-needed after 12-week fixed dosing. <i>Ophthalmology</i> . 2011 Jun;118(6):1098-106. (“Heier 2011”)
1040	Pai A, El Shafei MM, Mohammed OA, Al Hashimi M., Current concepts in intravitreal drug therapy for diabetic retinopathy. <i>Saudi J Ophthalmol</i> . 2010 Oct;24(4):143-9 (“Pai 2010”)
1041	U.S. Patent App. Pub. US 2007/0190058A1 (“Shams US App.”)

	Pub.”)
1042	U.S. Patent No. 9,254,338 (“338 patent”)
1043	WO 2012/097019A1 (“Yancopoulos PCT Application”)
1044	U.S. Dep’t Health & Human Servs., Nat’l Inst. Health, Nat’l Eye Inst., “Diabetic Retinopathy: What You Should Know (Sept. 2015),” available at: <a href="https://www.nei.nih.gov/sites/default/files/healthpdfs/Diabetic_Retinopathy_What_You_Should_Know.pdf">https://www.nei.nih.gov/sites/default/files/healthpdfs/Diabetic_Retinopathy_What_You_Should_Know.pdf</a> (“NIH DR”)
1045	U.S. Dep’t Health & Human Servs., Nat’l Inst. Health, Nat’l Eye Inst., “Age-Related Macular Degeneration: What You Should Know (Sept. 2015),” available at: <a href="https://www.nei.nih.gov/sites/default/files/healthpdfs/WYSK_AMD_English_Sept2015_PRINT.pdf">https://www.nei.nih.gov/sites/default/files/healthpdfs/WYSK_AMD_English_Sept2015_PRINT.pdf</a> (“NIH AMD”)
1046	Halpern MT, Schmier JK, Covert D, Venkataraman K. Resource utilization and costs of age-related macular degeneration. Health Care Financ Rev. 2006;27(3):37-47 (“Halpern 2006”)
1047	Rudge JS, Holash J, Hylton D, et al. VEGF Trap complex formation measures production rates of VEGF, providing a biomarker for predicting efficacious angiogenic blockade. Proc Natl Acad Sci U S A. 2007;104(47):18363-18370 (“Rudge 2007”)
1048	Li E, Donati S, Lindsley KB, Krzystolik MG, Virgili G. Treatment regimens for administration of anti-vascular endothelial growth factor agents for neovascular age-related macular degeneration. Cochrane Database Syst Rev. 2020;5(5):CD012208 (“Li 2020”)
1049	Brown DM, Michels M, Kaiser PK, et al. Ranibizumab versus verteporfin photodynamic therapy for neovascular age-related macular degeneration: Two-year results of the ANCHOR study. Ophthalmology. 2009;116(1):57-65.e5 (“Brown 2009”)
1050	Martin DF, Maguire MG, Fine SL, Ying GS, Jaffe GJ, Grunwald JE, et al, Comparison of Age-Related Macular Degeneration Treatments Trial (CATT) Research Group. Ranibizumab and bevacizumab for treatment of neovascular age-related macular degeneration: two-year results. Ophthalmology 2012; 119(7):1388-98 (“Martin”)
1051	Chakravarthy U, Harding SP, Rogers CA, Downes SM, Lotery AJ, Wordsworth S, et al, Inhibition of VEGF in Age-related choroidal Neovascularization (IVAN) Study Investigators. Ranibizumab versus bevacizumab to treat neovascular age-related macular degeneration: one-year findings from the IVAN randomized trial. Ophthalmology 2012; 119(7):1399-411 (“Chakravarthy 2012”)

1052	Rosenfeld PJ, Brown DM, Heier JS, Boyer DS, Kaiser PK, Chung CY, et al. Ranibizumab for neovascular age-related macular degeneration. <i>New England Journal of Medicine</i> 2006; 355(14):1419-31 (“Rosenfeld 2006”)
1053	Heimann, H. (2007). Chapter 5 Intravitreal Injections: Techniques and Sequelae. In: Holz, F.G., Spaide, R.F. (eds) <i>Medical Retina. Essentials in Ophthalmology</i> . Springer, Berlin, Heidelberg. (“Heimann 2007”)
1054	Jager RD, Aiello LP, Patel SC, Cunningham ET Jr. Risks of intravitreal injection: a comprehensive review. <i>Retina</i> . 2004;24(5):676-698. (“Jager 2004”)
1055	Certified Prosecution History of U.S. Patent No. 10,130,681 B2 (“681 patent PH”)
1056	Pilot Study of Intravitreal Injection of Ranibizumab for Macular Telangiectasia With Neovascularization (NCT00685854) (May 24, 2008), available at: <a href="https://clinicaltrials.gov/ct2/history/NCT00685854?V_1=View#StudyPageTop">https://clinicaltrials.gov/ct2/history/NCT00685854?V_1=View#StudyPageTop</a> (“MACTEL Study”)
1057	Authenticating Affidavit and the November 7, 2008 Web Archive of Ranibizumab Injections to Treat Macular Telangiectasia Without New Blood Vessel Growth (NCT00685854), available at <a href="https://web.archive.org/web/20081107014243/https://clinicaltrials.gov/ct2/show/NCT00685854">https://web.archive.org/web/20081107014243/https://clinicaltrials.gov/ct2/show/NCT00685854</a> , attached as Exhibit A (“MACTEL Study Wayback Machine”)
1058	Using the Wayback Machine, available at: <a href="https://help.archive.org/help/using-the-wayback-machine/">https://help.archive.org/help/using-the-wayback-machine/</a>
1059	Eylea Label 2011 available at: <a href="https://www.accessdata.fda.gov/drugsatfda_docs/label/2011/1253871bl.pdf">https://www.accessdata.fda.gov/drugsatfda_docs/label/2011/1253871bl.pdf</a>
1060	Glenn J. Jaffe, Paul Ashton, P. Andrew Pearson, <i>Intraocular Drug Delivery</i> (2006) (“Jaffe”)
1061	Steps for a Safe Intravitreal Injection Technique (2009), available at: <a href="https://www.retinalphysician.com/issues/2009/july-aug/steps-for-a-safe-intravitreal-injection-technique">https://www.retinalphysician.com/issues/2009/july-aug/steps-for-a-safe-intravitreal-injection-technique</a>
1062	Mylan’s Emergency Motion to Modify Scheduling Order and For Emergency Status Conference filed in <i>Regeneron Pharmaceuticals, Inc. v. Mylan Pharmaceuticals Inc.</i> , Case No. 1:22-cv-00061-TSK, Northern District of West Virginia (Dkt. 415) (“Mylan April 10 Motion”)

1063	April 19, 2023 Claim Construction Order entered in <i>Regeneron Pharmaceuticals, Inc. v. Mylan Pharmaceuticals Inc.</i> , Case No. 1:22-cv00061-TSK, Northern District of West Virginia. (Dkt. 427) (“Mylan Litigation CC Order”)
1064	U.S. Patent No. 7,531,173 (“173 patent”)
1065	Docket Navigator, Time to Trial
1066	Institution Decision in <i>Samsung Bioepis Co., Ltd. v. Regeneron Pharmaceuticals, Inc.</i> , IPR2023-00884 (Paper 13).
1067	Patent Owner Preliminary Response in <i>Samsung Bioepis Co., Ltd. v. Regeneron Pharmaceuticals, Inc.</i> , IPR2023-00884 (Paper 6).
1068	April 27, 2023 Stipulation Regarding Summary Judgment and Case Narrowing entered in <i>Regeneron Pharmaceuticals, Inc. v. Mylan Pharmaceuticals Inc.</i> , Case No. 1:22-cv00061-TSK, Northern District of West Virginia. (Dkt. 433)
1069	Exhibit A to May 19, 2023 Surreply to Address New Arguments Raised in Mylan’s Reply in Support of its Motion for Summary Judgment entered in <i>Regeneron Pharmaceuticals, Inc. v. Mylan Pharmaceuticals Inc.</i> , Case No. 1:22-cv00061-TSK, Northern District of West Virginia. (Dkt. 484-2)
1070	Petition in <i>Samsung Bioepis Co., Ltd. v. Regeneron Pharmaceuticals, Inc.</i> , IPR2023-00884 (Paper 2).

Biocon Biologics Inc. (“Petitioner”) petitions for *inter partes* review (“IPR”) under 35 U.S.C. §§ 311–319 and 37 C.F.R. §§ 42 *et seq.*, seeking cancellation of claims 1-30 (“Challenged Claims”) of U.S. Patent No. 11,253,572 (“572 patent”) (Ex.1001), assigned to Patent Owner, Regeneron Pharmaceuticals, Inc. (“Regeneron” or “PO”). This petition replicates Samsung Bioepis Co., Ltd.’s (“Samsung”) petition filed in IPR2023-00884 (“Samsung IPR”), with the exception of the petitioner-specific mandatory notices and certain sections relating to discretionary denial, and asserts the same grounds of unpatentability upon which the Patent Trial and Appeal Board (the “Board”) has already instituted review in the Samsung IPR. Accordingly, there exists a reasonable likelihood that Petitioner will prevail in demonstrating unpatentability of at least one of the Challenged Claims, and Petitioner respectfully seeks to join the Samsung IPR as set forth in the accompanying motion for joinder filed concurrently. Samsung indicated it does not oppose Petitioner’s motion for joinder.

This Petition is timely and proper under 35 U.S.C. § 315(b) (the 1-year time bar “shall not apply to a request for joinder under subsection (c)”) and 35 U.S.C. § 315(c).

## **I. INTRODUCTION**

The Challenged Claims are directed to treating angiogenic eye disorders, including diabetic macular edema (“DME”) and age-related macular degeneration



(“AMD”), by administering aflibercept via a number of initial monthly loading doses, followed by maintenance doses administered every two months.

One subset of the Challenged Claims—claims 15-25—is directed to a DME dosing regimen with two or more monthly loading doses followed by maintenance doses administered every-two-months (the “DME Claims”). Those claims were not challenged in Apotex’s prior ’572 IPR Petition (IPR2002-01524 (“Apotex Petition”)), which addressed other claims of the ’572 patent. Ex.1008.

Unlike the other ’572 claims previously addressed by the Board, independent claim 15 and dependent claim 24 recite only DME dosing regimens. They do not contain what the Board previously referred to as a “results limitation”—i.e., maintaining or gaining visual acuity. Ex.1004, 15. Instead, claim 15 recites treating DME by administering a single initial dose of aflibercept, followed by “one or more” monthly secondary doses (the “loading” phase), and then maintenance doses every two months. Claim 24 depends from claim 15 and recites that “only two secondary doses” are administered, meaning only three monthly doses are given before 8-week dosing.

Thus, claims 15 and 24 are anticipated by any aflibercept DME prior art disclosing three monthly loading doses followed by 8-week maintenance dosing. Regeneron’s 2009 Press Release discloses exactly that: administering 2 mg aflibercept to treat DME using a dosing regimen of three monthly loading doses that

include an initial and two “secondary” doses, followed by maintenance doses at 8-week intervals. Ex.1005. Regeneron’s December 2010 Press Release discloses the same DME regimen. Ex.1006. Thus, as shown in Ground I, each of the 2009 Press Release and December 2010 Press Release anticipates claims 15 and 24.

A second subset of Challenged Claims—1-5, 8-11, 16-17, 20-21, and 26-30—recite a loading/maintenance regimen for generic angiogenic eye disorders, DME, or AMD, and also include certain “results limitations” reciting either a general result within a specific time frame (e.g., “wherein the patient achieves a gain in visual acuity within 52 [or 24] weeks”) or a specific visual acuity gain (e.g., “wherein the patient gains at least 7 [or 8 or 9] letters” in the standard ETDRS letter score for visual acuity, or wherein the regimen is “as effective” as ranibizumab). These claims are collectively referred to as the “Results Claims” herein.

Results Claims 1-5, 8-11, 16-17, and 20-21 recite treating either a generic angiogenic eye disorder or DME specifically (“Generic Results Claims”/“DME Results Claims”). As shown in Ground II, the December 2010 Press Release anticipates the Generic/DME Results Claims. The December 2010 Press Release discloses the same dosing regimens for DME as the 2009 Press Release, but further reports the visual acuity results from DME clinical trials in which these regimens were applied. The December 2010 Press Release explicitly discloses that DME patients both achieved the results recited within the recited 24 or 52 week time

frames, and that they achieved the specific visual acuity gains recited (e.g., a gain of at least 7, 8, or 9 letters).

Similarly, Results Claims 26-30 recite a method for treating AMD (“AMD Results Claims”), and further recite that the method is “as effective” as monthly ranibizumab at week 52. As shown in Ground III, the AMD Results Claims are anticipated by Regeneron’s November 2010 Press Release, which discloses the same dosing regimen as the other press releases, but for treatment of AMD. Ex.1007. The November 2010 Press Release further explicitly discloses the claimed ranibizumab comparison results. *Id.*

The Results Claims are also rendered obvious by the 2009 Press Release or separately by Dixon’s disclosure of the claimed dosing regimen for AMD. Notably, in the Apotex Petition, Apotex argued that the “results limitations” only were inherent or not entitled to patentable weight based on Dixon—an argument the Board rejected; Apotex did *not* argue that they were obvious. Ex.1008, 12. It would have been obvious to a POSA, however, that at least some patients, when treated via the recited dosing regimens disclosed in the prior art, would achieve the recited 7-9 letter gains, which were modest compared to known gains for aflibercept. For instance, it was known that a single 2 mg dose of aflibercept produced 15 letter gains for some patients within the first six weeks of treatment. And Dixon reports that AMD patients who received four initial monthly doses, followed by PRN dosing resulting in only

an average of 1.6 additional injections through 52 weeks (for a total of 5.6 doses in a year on average), achieved a mean of 9 letter gains, ***with 29% gaining at least 15 letters*** by 52 weeks. Ex.1009, Dixon, 1576.

Importantly, the Results Claims do not require that every patient achieve the recited gain, but instead are directed to methods for treating “*a* patient.” A POSA thus only need find it obvious that *some* patients would achieve the recited gains. See Ex.1001, claims 1, 15, 26, and 29. It would have been obvious to a POSA that at least some AMD patients would have achieved the lower 7-9 letter gains claimed in the AMD Results Claims using three initial monthly doses followed by 8-week maintenance dosing (instead of four monthly doses followed by less frequent PRN dosing). Three initial doses followed by 8-week dosing would result in eight overall doses during the 52 week period—***two more*** doses than had been shown to produce 15 letter gains in almost 1 in 3 patients.

Similarly, as to the DME Results Claims, POSAs knew that a single initial 4 mg dose of aflibercept had produced a 9 letter gain by 4 weeks (Ex.1009, 1575) and that the DME clinical trials described in the 2009 Press Release had achieved a mean gain of “+8.5 to +11.4 letter[s]” within 24 weeks (Ex.1010, 2010 ARVO Abstract, 1).

Thus, as shown in Grounds IV and V, Dixon and the 2009 Press Release, in combination with references reporting aflibercept efficacy for AMD and DME, render obvious the Generic/AMD and DME Results Claims respectively.

Petitioner also presents Grounds VI-IX addressing various dependent claims, as further set out below. Finally, in Grounds X and XI, Petitioner addresses anticipation of the Results Claims on the basis that the “results limitations” are not entitled to patentable weight and are thus anticipated by the dosing regimens disclosed in the September 2009 Press Release and Dixon.

Discretionary denial is not appropriate here. None of the references cited in Petitioner’s grounds were substantively discussed during prosecution. While Apotex previously filed a petition against the ’572 patent against AMD claims including results limitations, Apotex did not challenge any of the DME claims—including anticipated claims 15 and 24, which do not contain a “results limitation”—and Apotex did not rely on the 2009 and 2010 Press Releases as part of its grounds. *See*, Ex.1008. Moreover, Apotex did not present obviousness arguments as to the Results Claims, including as to Dixon. *Id.* The only overlap in Petitioner’s grounds and Apotex’s is as to minor dependent limitations and as to Grounds X and XI.

The Board should institute IPR of the Challenged Claims and find those claims unpatentable on the grounds presented herein.

## **II. MANDATORY NOTICES (37 C.F.R. § 42.8)**

### **A. Real Parties-In-Interest (37 C.F.R. § 42.8(b)(1))**

Petitioner Biocon Biologics Inc., Biocon Limited, Biocon Biologics Limited, Biocon Biologics UK Limited, and Biosimilar Collaborations Ireland Limited are real parties-in-interest (“RPIs”) to the current Petition. Biocon Biologics Limited is a subsidiary of Biocon Limited, a publicly traded company. Biocon Biologics UK Limited is a wholly owned subsidiary of Biocon Biologics Limited, and Biosimilar Collaborations Ireland Limited and Biocon Biologics Inc. are wholly owned subsidiaries of Biocon Biologics UK Limited.

Further RPIs include Mylan Pharmaceuticals Inc. (“Mylan”) and Johnson & Johnson. Viatris Inc. and Mylan Inc. are parent companies of Mylan Pharmaceuticals Inc. Accordingly, Viatris Inc., Mylan Inc., and Mylan Pharmaceuticals Inc. are identified as RPIs to the current Petition. Momenta Pharmaceuticals, Inc. and Janssen Research & Development LLC are wholly-owned subsidiaries of Johnson & Johnson, a publicly held company. Momenta Pharmaceuticals, Inc., Janssen Research & Development LLC, and Johnson & Johnson are also RPIs to the current Petition.

No other parties exercised or could have exercised control over this Petition; no other parties funded, directed, and controlled this Petition. *See* Trial Practice Guide, 15-16 (November 2019).

**B. Related Matters (37 C.F.R. § 42.8(b)(2))**

As noted above, Apotex filed an IPR Petition on September 9, 2022 asserting five grounds for invalidating the non-DME claims of the '572 patent, all of which recite “results limitations.” Ex.1008 (“Apotex Petition”). Grounds 1-4 of Apotex’s petition were based on anticipation: (1) anticipation of claims 1-5, 8-11, 14, and 26-30 based on Dixon; (2) anticipation of claims 1-5, 8-11, 14, and 26-30 based on a May 8, 2008 Regeneron Press Release; (3) anticipation of claims 1-5, 8-11, 14, and 26-30 based on NCT-795 (i.e., VIEW 1 ClinicalTrials.gov entry); and (4) anticipation of claims 1-5, 8-11, 14, and 26-30 based on NCT-377 (i.e., VIEW 2 ClinicalTrials.gov entry). Ex.1008, 12.

With respect to the “results limitations” in these claims, Apotex argued that they (1) were not entitled to patentable weight (*id.*, 17-20); or (2) were inherently anticipated by practice of the claimed method (*id.*, 35-68). Notably, Apotex did not rely on obviousness to address the visual acuity limitations in any of the claims.

Apotex’s Ground 5 only asserted obviousness for claims 6, 7, and 12-13, relying on any of the above anticipatory references in view of Hecht. Ex.1008, 12. Apotex’s Ground 5 obviousness argument was solely directed to the “isotonic solution” limitation in dependent claims 6 and 12 and the “nonionic surfactant” limitation in dependent claims 7 and 13—not the “results limitations.” Ex.1008, 68-71.

In its Institution Decision, the Board determined that the “results limitations” were entitled to patentable weight. Ex.1004 (“Apotex ’572 ID”), 14-18. The Board then went on to determine that the prior art did not inherently disclose the “results limitations” for at least two reasons: (1) less than all VIEW 1/2 patients achieved the claimed visual acuity limitations; and (2) the patient population reported in the prior art as achieving the recited gains was not the same as that described in the ’572 patent. *Id.*, 30-36. It therefore denied institution. *Id.*

The ’572 patent is in the same family as U.S. Patent Nos. 9,254,338 (“’338 patent”), 9,669,069 (“’069 patent”), 10,130,681 (“’681 patent”), and 10,888,601 (“’601 patent”). Ex.1001.

In May 2021, RPI Mylan filed petitions requesting IPR of the ’338 and ’069 patents. *See Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, No. IPR2021-00880 (P.T.A.B.) (“’069 IPR”) and *Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, No. IPR2021-00881 (P.T.A.B.) (“’338 IPR”). The Board instituted review for the ’338 and ’069 patents and found all Challenged Claims of those patents unpatentable in Final Written Decisions (“FWD”) issued on November 9, 2022. *See* Ex.1011, ’338 IPR, Paper 94 (“’338 FWD”); ’069 IPR, Paper 89.

RPI Mylan also filed a petition requesting IPR of the ’681 patent on July 1, 2022 (IPR2022-01225) (“Mylan ’681 IPR”). The Mylan ’681 IPR was instituted on January 11, 2023. Ex.1012 (“’681 ID”). Samsung also filed a petition against the



'681 patent on January 6, 2023 (IPR2023-00442) asserting different grounds of invalidity than in the Mylan '681 IPR. A decision on Samsung's petition is pending.

RPI Mylan further filed a petition requesting IPR of claims 1-9, 34-39, 41-43, and 45 of the '601 patent on July 1, 2022. *See* IPR2022-01226 ("Mylan '601 IPR"). The Mylan 601 IPR was instituted on January 11, 2023. Ex.1013 ('601 ID). Samsung filed a "copycat" IPR petition on February 10, 2023. *See Samsung Bioepis Co., Ltd. v. Regeneron Pharmaceuticals, Inc.*, IPR2023-00566, Papers 2-3 (P.T.A.B. Feb. 10, 2023). The Board instituted Samsung's IPR petition and granted its motion for joinder on March 22, 2023 in IPR2023-00566. *Id.*, Paper 10.

Samsung also filed a petition requesting IPR of the DME claims of the '601 patent on March 26, 2023. *See Samsung Bioepis Co., Ltd. v. Regeneron Pharmaceuticals, Inc.*, IPR2023-00739. The Board instituted Samsung's IPR petition on October 20, 2023. *Id.*, Paper 9. Petitioner filed a "copycat" IPR petition with an accompanying motion for joinder on November 20, 2023. *See Biocon Biologics Inc. v. Regeneron Pharmaceuticals, Inc.*, IPR2024-00201, Papers 2-3. A decision on Petitioner's petition is pending.

Thus, Petitioner identifies *Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, No. IPR2022-01225 (P.T.A.B.) and *Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, No. IPR2022-01226 (P.T.A.B.). Petitioner further identifies *Biocon Biologics Inc. v. Regeneron Pharms., Inc.*, IPR2024-00201 (P.T.A.B.) and *Samsung Bioepis Co.*,

*Ltd. v. Regeneron Pharmaceuticals, Inc.*, IPR2023-00739 (P.T.A.B.). Petitioner also identifies *Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, No. IPR2021-00880 (P.T.A.B.), *Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, No. IPR2021-00881 (P.T.A.B.), *Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, No. IPR2023-00099 (P.T.A.B.), *Regeneron Pharms., Inc. v. Mylan Pharms. Inc.*, No. 2023-1395 (Fed. Cir.), *Regeneron Pharms., Inc. v. Mylan Pharms. Inc.*, No. 2023-1396 (Fed. Cir.), and *Regeneron Pharms., Inc. v. Mylan Pharms. Inc.*, 1:22-cv-00061-TSK (N.D.W. Va.) (“Mylan Litigation”). To the best of Petitioner’s knowledge, the following are additional judicial or administrative matters that would affect, or be affected by, a decision in this proceeding: *Apotex Inc. v. Regeneron Pharmaceuticals, Inc.*, No. IPR2022-01524 (P.T.A.B.), *Samsung Bioepis Co., Ltd. v. Regeneron Pharms., Inc.*, IPR2023-00442 (P.T.A.B.), *Samsung Bioepis Co., Ltd. v. Regeneron Pharms., Inc.*, IPR2023-00884 (P.T.A.B.), *U.S. v. Regeneron Pharms., Inc.*, No. 1:20-cv-11217-FDS (D. Mass.), and *Horizon Healthcare Servs., Inc. v. Regeneron Pharms., Inc.*, No. 1:22-cv-10493-FDS (D. Mass.).

U.S. Patent Nos. 9,254,338 B2; 9,669,069 B2; 10,857,205 B2; 10,828,345 B2; 10,130,681 B2; 10,888,601 B2; 11,559,564; 11,707,506 B2; and 11,730,794; and U.S. Patent Application Nos. 17/072,417; 17/112,063; and 18/496,472 each claim the benefit of the ’572 patent’s purported priority date.

**C. Lead and Back-Up Counsel (37 C.F.R. § 42.8(b)(3)-(4))**

Petitioner identifies its lead and backup counsel below. A Power of Attorney is filed concurrently herewith under 37 C.F.R. § 42.10(b).

Lead	Back-Up
<p>Paul J. Molino (Reg. No. 45,350) paul@rmmslegal.com</p> <p><u>Postal and Hand Delivery Address</u> Rakoczy Molino Mazzochi Siwik LLP 6 West Hubbard Street Chicago, IL 60654 Telephone: (312) 222-6300 Facsimile: (312) 843-6260</p> <p><i>Petitioner consents to email service at:</i> MYL_REG_IPR@rmmslegal.com</p>	<p>William A. Rakoczy (<i>pro hac vice</i> to be filed) wrakoczy@rmmslegal.com</p> <p>Deanne M. Mazzochi (Reg. No. 50,158) dmazzochi@rmmslegal.com</p> <p>Heinz J. Salmen (<i>pro hac vice</i> to be filed) hsalmen@rmmslegal.com</p> <p>Jeff A. Marx (Reg. No. 56,977) jmarx@rmmslegal.com</p> <p>Eric R. Hunt (<i>pro hac vice</i> to be filed) ehunt@rmmslegal.com</p> <p>Lauren M. Lesko (<i>pro hac vice</i> to be filed) llesko@rmmslegal.com</p> <p>Neil B. McLaughlin (Reg. No. 70,810) nmclaughlin@rmmslegal.com</p> <p>L. Scott Beall (Reg. No. 52,601) sbeall@rmmslegal.com</p> <p>Thomas H. Ehrich (Reg. No. 67,122) tehrich@rmmslegal.com</p>

	<p>Steven J. Birkos (Reg. No. 65,300) sbirkos@rmmslegal.com</p> <p>Jake R. Ritthamel (<i>pro hac vice</i> to be filed) jritthamel@rmmslegal.com</p> <p><u>Postal and Hand Delivery Address</u> Rakoczy Molino Mazzochi Siwik LLP 6 West Hubbard Street Chicago, IL 60654 Telephone: (312) 222-5127 Facsimile: (312) 843-6260</p>
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**D. Service Information (37 C.F.R. § 42.8(b)(4))**

Please direct all correspondence to lead and back-up counsel at the contact information above. Petitioner also consents to service by email at: MYL\_REG\_IPR@rmmslegal.com. Petitioner intends to file a motion seeking the admission of William A. Rakoczy, Heinz J. Salmen, Eric R. Hunt, Lauren M. Lesko, and Jake R. Ritthamel to appear *pro hac vice* when authorized to do so.

**E. Payment of Fees (37 C.F.R. §§ 42.103 and 42.15(a))**

The required fees are submitted herewith. The undersigned representative of Petitioner hereby authorizes the Patent Office to charge any additional fees or credit any overpayment to Deposit Account 503626.

**III. GROUNDS FOR STANDING (37 C.F.R. § 42.104(a); 37 C.F.R. §§ 42.101(a)-(c))**

Petitioner certifies that the '572 patent is available for IPR and that Petitioner is not barred or estopped from requesting this review, including at least because 35

U.S.C. § 315(b) specifies that the 1-year time bar “shall not apply to a request for joinder under subsection (c)”.

#### **IV. IDENTIFICATION OF CHALLENGE AND RELIEF REQUESTED**

##### **A. Identification of Challenge (37 C.F.R. § 42.104(b))**

Petitioner requests IPR of '572 patent claims 1-30 and that the Board cancel those claims as unpatentable.

##### **B. Grounds of Challenge (37 C.F.R. § 42.204(b)(2))**

Petitioner respectfully requests that the Board grant institution of IPR on the Challenged Claims based on the following grounds:

<b>Statutory Grounds of Challenge</b>	
<b>Ground I</b>	Claims 15 and 24 are anticipated by each of the 2009 Press Release and December 2010 Press Release
<b>Ground II</b>	Claims 1-5, 8-11, 16-17, and 20-21 are anticipated by the December 2010 Press Release
<b>Ground III</b>	Claims 26-30 are anticipated by the November 2010 Press Release
<b>Ground IV</b>	Claims 1-5, 8-11, and 26-30 are rendered obvious by Dixon alone or in view of the 2006 Press Release

<b>Ground V</b>	Claims 16-17, and 20-21 are rendered obvious by the 2009 Press Release alone or in view of the 2007 ARVO Abstract, Dixon and/or the 2010 ARVO Abstract (collectively “Ground V References”)
<b>Ground VI</b>	Claims 6-7 and 12-13 are rendered obvious by each of Dixon in view of Hecht, Dixon in view of the 2006 Press Release and Hecht, and the December 2010 Press Release in view of Hecht
<b>Ground VII</b>	Claims 18-19 and 22-23 are rendered obvious by each of the December 2010 Press Release in view of Hecht, and the 2009 Press Release in view of the Ground V References and Hecht
<b>Ground VIII</b>	Claim 14 is rendered obvious by each of Dixon and the December 2010 Press Release alone or in view of the CATT Study and/or PIER Study
<b>Ground IX</b>	Claim 25 is rendered obvious by the 2009 Press Release alone or in view of Shams or Elman 2010
<b>Ground X</b>	Claims 1-5, 8-11, and 26-30 are anticipated by Dixon because the “results limitations” lack patentable weight

<b>Ground XI</b>	Claims 1-5, 8-11, 16-17, and 20-21 are anticipated by the 2009 Press Release because the “results limitations” lack patentable weight
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## V. THE '572 PATENT

### A. Overview

The '572 patent issued on February 22, 2022. The '572 patent names as its sole inventor, George D. Yancopoulos. Ex.1001; *see generally*, Ex.1002, ¶¶70-73

The '572 patent specification discloses that “the methods of the invention comprise sequentially administering multiple doses of a VEGF antagonist” to treat angiogenic eye disorders, i.e., eye disorders caused by or associated with the formation of new blood vessels. Ex.1001, Abstract; 1:30-56.

Examples 1-6 of the '572 patent describe the results of Phase I, II or III clinical trials using different dosing regimens of “VEGF Receptor-Based Chimeric Molecule (VEGFT)” in subjects with neovascular AMD (Examples 1-4), DME (Example 5), or macular edema secondary to CRVO (Example 6). *See generally id.*, Cols. 7-17. Example 7 of the '572 patent describes additional dosing regimens, but does not contain any test results. *Id.*, 15:35-17:28

### B. Priority Date

Claim 25 recites the use of five loading 2mg doses to treat DME, followed by 8 week maintenance dosing. That dosing regimen—including the recited dosage (2.0

mg), the recited interval between secondary doses and tertiary doses (4 weeks and 8 weeks, respectively), the recited indication (DME), or a combination of those variables for the treatment of DME/DR—was not described in the specification of any application to which the '572 patent claims priority prior to July 12, 2013. Ex.1002, ¶¶91-103.

Based on at least the priority date of claim 25, AIA Sections 102 and 103 apply to the prior art discussed in this petition (see MPEP §2159), but even if pre-AIA Sections 102 and 103 apply, Petitioner's arguments are the same.<sup>1</sup> Petitioner reserves all rights to challenge the extent to which Regeneron asserts application of pre-AIA standards of patentability.

### **C. The Challenged Claims**

Independent claims 1, 15, 26, and 29 are directed to methods for treating an angiogenic eye disorder, age-related macular degeneration, or diabetic macular edema in a patient by administering a single initial dose of 2mg of aflibercept, followed by one or more secondary doses 4 weeks apart, and one or more tertiary doses 8 weeks apart. Ex.1001; *see generally*, Ex.1002, ¶¶78-79. Notably, the independent claims recite methods for treating “a patient in need thereof,” not an

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<sup>1</sup> For the purposes of this petition only, Petitioner assumes a priority date of January 21, 2011 for the other claims.



entire patient population or a percentage thereof, because that is all the specification describes. These claims do not recite efficacy for a broader population or recite that the regimen be more efficacious than other regimens. Ex.1001.

The four independent claims differ in their recitation, if any, of “results limitations” and indications. Ex.1001; *see generally*, Ex.1002, ¶¶78-79. Claim 15 is directed to treating DME and does not recite any results limitation. Claim 1 is directed to any angiogenic eye disorder and recites a gain in visual acuity within 52 weeks after the initial dose. *Id.* Claims 26 and 29 are directed to AMD and recite that the method be as effective as monthly administration of 0.5 mg of ranibizumab by intravitreal injection at 52 weeks following the initial dose. *Id.*

Dependent claims 2-5, 8-11, 16-17, 20-21, 24, and 27-28 and 30 further specify the number of secondary doses, gains in Best Corrected Visual Acuity (BCVA) according to Early Treatment Diabetic Retinopathy Study (ETDRS) letter score, and weeks to achieve the efficacy results. *Id.* Dependent claims 6-7, 12-13, 18-19 and 22-23 recite that the aflibercept is formulated as an isotonic solution or with a nonionic surfactant. Dependent claim 14 recites two exclusion criteria. *Id.* Claim 25 recites that the number of initial loading doses for treating DME is five total. *Id.*

#### **D. Prosecution History**

The '572 patent issued from U.S. Application No. 17/352,892, filed on June 21, 2021. Ex.1014, '572 patent PH. Ex.1014; *see also*, Ex.1002, ¶¶74-77. On October 28, 2021, the Examiner issued a non-final office action rejecting the pending claims on the ground of non-statutory obviousness-type double patenting as being unpatentable over certain claims of the '338, '069, '681, '345, and '601 patents. Ex.1014, 1239-1245. In response, the applicants submitted terminal disclaimers to the reference patents. *Id.*, 1315-1319. On December 22, 2021, the Examiner issued a notice of allowance for the claims without making a further rejection over prior art disclosing the same dosing regimen as the reference patents. *Id.*, 1334-1340.

#### **E. Level of Ordinary Skill in the Art**

The '572, '338, and '601 patents are in the same family with the same specification. In the Mylan '338 and '601 IPRs, the petitioner proposed the following definition for the relevant person of ordinary skill in the art:

A person of ordinary skill in the art at the time of the invention would have had (1) knowledge regarding the diagnosis and treatment of angiogenic eye disorders, including the administration of therapies to treat said disorders; and (2) the ability to understand results and findings presented or published by others in the field,

including the publications discussed herein. Typically, such a person would have an advanced degree, such as an M.D. or Ph.D. (or equivalent, or less education but considerable professional experience in the medical, biotechnological, or pharmaceutical field), with practical academic or medical experience in (i) developing treatments for angiogenic eye disorders (such as AMD), including through the use of VEGF antagonists, or (ii) treating of same, including through the use of VEGF antagonists.

Ex.1011, '338 FWD, 9-10; Ex.1013, 15-16. In the '601 ID and '338 FWD, the Board found that this definition was consistent with the proper level of skill. Ex.1013, 15-16; Ex.1011, 10; *see also* Ex.1012, '681 ID, 20-21. The Board further accepted this definition in ruling on Apotex's '572 Petition, Ex.1004, 11, and in its ruling on Samsung's '572 Petition, Ex.1066, 16-17. Petitioner proposes the same definition be adopted here. *See also* Ex.1002, ¶¶22-25.

## **VI. CONSTRUCTION OF THE CHALLENGED CLAIMS**

### **A. “A method for treating...”**

For the purposes of this petition only, Petitioner does not contest that the preamble of challenged claims 1, 15, 26, or 29 is limiting, though it reserves the right

to do so in separate proceedings. Petitioner proposes that the preamble be given the meaning of “a method for treating...” consistent with the meaning given to that term in the ’338 FWD and ’601 ID. Ex.1011; Ex.1013. Petitioner further proposes that the claims not be construed to require a particular level of efficacy, for the same reasons argued by Samsung, and consistent with the Board’s decision with regard to the Samsung Petition. (See Ex.1066, 19-20).

## **B. Exclusion Criteria**

Dependent claim 14 recites two exclusion criteria.

In the ’601 ID, the Board found that the same exclusion criteria recited here are not entitled to patentable weight. Ex.1013, 12-15; *see also* Ex.1012, 18-20. Relying on the two-step test in *Praxair Distrib., Inc. v. Mallinckrodt Hosp. Prods. IP Ltd.*, 890 F.3d 1024, 1032 (Fed. Cir. 2018), the Board found that “there is little question that the exclusion criteria are directed to informational content” under the first step of the *Praxair* analysis. The Board further found that under the second *Praxair* step, the exclusion criteria lacked a functional relationship to the rest of the claims, particularly because “the claims do not expressly recite any positive step to be performed (or negative step *not* to be performed) should a patient meet the exclusion criteria.” Ex.1013, 14; *see also* Ex.1012, 19.

In the Mylan Litigation CC Order, the district court likewise found the recited exclusion criteria as lacking patentable weight. Ex.1063, 29-37. The court found

that the recited exclusion criteria “do[] not *require* any action step to be taken as a consequence of” assessing a patient for the recited inflammation or infection. *Id.* 34-35 (emphasis original). In other words, “nothing [about recited the exclusion criteria] has transformed the process of taking the drug aflibercept in the claimed method – the actual method ...[with] 2mg of aflibercept, on the stated dosing schedule, remains the same.” *Id.* And, the exclusion criteria are simply “a non-binding informational ‘option’ for doctors to consider.” *Id.* Since there is no additional step that “flows from” the exclusion criteria, the court concluded that the exclusion criteria are not entitled to patentable weight. *Id.*

In the Samsung '572 patent IPR, PO did not challenge this construction. Ex.1067, 13. Given the absence of a dispute, the Board adopted Samsung’s interpretation of the “exclusion criteria. Ex.1066, 20-21. Petitioner agrees with the understanding of the Board and the district court. The same exclusion criteria are not entitled to patentable weight in the Challenged Claims. *See also* Ex.1002, ¶¶26-30; 86-90.<sup>2</sup>

## **VII. SCOPE AND CONTENT OF THE PRIOR ART**

Petitioner summarizes the scope and content of the prior art, including the

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<sup>2</sup> Petitioner separately addresses the patentable weight of the “results limitations” in Grounds X and XI below.

disclosures of its primary prior art references, below. As discussed in Section V.B, AIA 35 U.S.C. §102 applies to the '572 patent. However, all references discussed herein are prior art under both pre-AIA and AIA U.S.C. §102 and Petitioner's arguments are the same.

**A. The 2009 Press Release**

The 2009 Press Release was published on September 14, 2009, and thus constitutes prior art under both pre-AIA and AIA 35 U.S.C. § 102. Ex.1005. It reflects its date on its face, was submitted during prosecution, but was never substantively addressed by the Examiner.

The 2009 Press Release discusses VEGF Trap-Eye, also known as aflibercept. Ex.1005; *see also, e.g.*, Ex.1015; Ex.1009. It discusses a number of clinical trials for various indications of VEGF Trap-Eye, including AMD and DME. *Id.* As to DME, the press release specifically states that VEGF Trap-Eye is “in Phase 2 development for the treatment of Diabetic Macular Edema (DME).” Ex.1005, 1. It teaches that the trial an arm consisting of 2mg VEGF Trap-Eye administered via three monthly loading doses followed by dosing every eight weeks. *Id.*; *see also*, Ex.1002, ¶¶104-105.

## **B. The November 2010 Press Release**

The November 2010 Press Release was published on November 22, 2010, and thus constitutes prior art under both pre-AIA and AIA 35 U.S.C. §102. Ex.1007. It reflects its date on its face and was never substantively addressed by the Examiner.

The November 2010 Press Release discloses the results of VEGF Trap-Eye administered via three monthly loading doses followed by dosing every eight weeks, including a summary of the efficacy data showing mean improvements in vision of 7.9 and 8.9 letters at 52 weeks versus baseline. *Id.*, 4; Ex.1002, ¶¶106-107.

## **C. The December 2010 Press Release**

The December 2010 Press Release was published on December 20, 2010, and thus constitutes prior art under both pre-AIA and AIA 35 U.S.C. §102. Ex.1006. It reflects its date on its face and was never substantively addressed by the Examiner.

The December 2010 Press Release discloses the results of the Phase II DA VINCI study for the treatment of DME with aflibercept. Ex.1006; *see also*, Ex.1002, ¶¶108-109. It discloses that the DA VINCI study included a study arm with three initial monthly doses of 2mg aflibercept followed by either dosing every two months or PRN (as-needed) dosing through week 52. Ex.1006, 1-2. It also includes efficacy data showing mean changes in visual acuity of 8.5 and 9.7 letters at weeks 24 and 52 respectively in the dosing arm with bimonthly doses following three initial monthly doses. *Id.*, 2-3.

#### **D. Dixon**

Dixon et al., “VEGF Trap-Eye for the Treatment of Neovascular Age-Related Macular Degeneration,” *Expert Opin. Investig. Drugs*, 18(10): 1573-80 (2009)) (“Dixon”) is a peer reviewed publication describing, inter alia, the Regeneron Phase III clinical trials known as VIEW 1 and VIEW 2. Ex.1009. Dixon was published in 2009, and thus constitutes prior art under both pre-AIA and AIA 35 U.S.C. § 102. *Id.*

Dixon reviews clinical trial data regarding administering aflibercept to treat neovascular AMD. *Id.* 1573; *see also*, Ex.1002, ¶¶110-113. Dixon discloses that “VEGF Trap-Eye is a novel anti-VEGF therapy, with Phase I and II trial data indicating safety, tolerability and efficacy for the treatment of neovascular AMD.” Ex.1009, 1573. Dixon discloses that in a Phase II trial, AMD patients who received four initial monthly doses, followed by only an average of 1.6 additional injections through 52 weeks (for a total of ~5.6 doses in a year on average), achieved a mean of 9 letter gains, with 29% gaining greater than 15 letters, by 52 weeks. *Id.*, 1576.

Dixon further describes VEGF Trap-Eye as “a fusion protein of key binding domains of human VEGFR-1 and -2 combined with a human IgG Fc fragment.” Ex.1009, 1575. Dixon also discloses that “VEGF Trap-Eye and aflibercept (the oncology product) have *the same molecular structure*, but there are substantial



differences between the preparation of the purified drug product and their formulations.” *Id.* (emphasis added).

Dixon discloses that a Phase III trial of aflibercept “will evaluate the safety and efficacy of intravitreal VEGF Trap-Eye at doses of 0.5 and 2.0 mg administered at 4-week dosing intervals and 2.0 mg at an 8 week dosing interval (following three monthly doses), compared with 0.5 mg of ranibizumab administered every 4 weeks.” Ex.1009, 1576.

#### **E. Hecht**

Hecht, a chapter in *Remington: The Science and Practice of Pharmacy*, Volume II, was published in 1995, and thus constitutes prior art under both pre-AIA and AIA 35 U.S.C. § 102. Ex.1016. Hecht reflects its date on its face and was never substantively addressed by the Examiner. Hecht provides guidance on formulating ophthalmic solutions for injection. *Id.*; *see also* Ex.1002, ¶¶114-115.

#### **F. Shams**

Shams is a Genentech patent application, titled “Method for treating intraocular neovascular diseases,” and generally relates to methods for treating an intraocular neovascular disorder with a VEGF antagonist. Ex.1017. Shams published in 2006 and is prior art under both pre-AIA and AIA 35 U.S.C. § 102. *Id.* Shams teaches loading and maintenance dosing, and further that the time for each

dose can be modified through “routine adjustments to the dosing schedule.” *Id.*; *see also*, Ex.1002, ¶¶116-118.

### **G. Elman 2010**

Michael J. Elman, MD, et al., Randomized Trial Evaluating Ranibizumab Plus Prompt or Deferred Laser or Triamcinolone Plus Prompt Laser for Diabetic Macular Edema, *Ophthalmology* (June 2010) (“Elman 2010”) is prior art under both pre-AIA and AIA 35 U.S.C. § 102.<sup>3</sup> Ex.1018; Ex.1019. It was not cited during the prosecution. Ex.1014.

Elman 2010 describes a Phase III trial for ranibizumab for the treatment of DME. Ex.1018; *see also* Ex.1002, ¶¶119-126. In the Elman 2010 trial, one of the subject groups was given four initial monthly loading doses. After the four loading doses were given, a clinician evaluated the subjects a month later to determine if a fifth monthly dose should be given. *Id.* Elman 2010 reports that at least 78% of patients received a fifth loading monthly dose. *Id.*, 1067

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<sup>3</sup> Elman 2010 reflects a publication date of April 27, 2010, with a 2010 copyright. Ex.1018, 1077 ([a]vailable online: April 27, 2010”). The entry in *Ophthalmology* lists its online publication date as April 27, 2010, with publication in Volume 117, Issue 6 in June 2010. Ex.1019, [https://www.aaojournal.org/article/S0161-6420\(10\)00243-5/fulltext](https://www.aaojournal.org/article/S0161-6420(10)00243-5/fulltext).

## H. CATT and PIER Studies

Claim 14 of the '572 patent recites two exclusion criteria for “(1) active intraocular inflammation” and “(2) active ocular or periocular infection.” Ex.1001.

The table below reproduces the recited exclusion criteria on the left, with the relevant corresponding exclusion criteria from the prior art CATT and PIER studies on the right:

<b>Table 1</b>	
<p>“(1) <i>active intraocular inflammation</i>” – i.e. current inflammation within the eye</p>	<p>“<i>Active</i> or recent (within 4 weeks) <i>intraocular inflammation</i> (grade trace or below) in the study eye.” Ex.1020, CATT Study, 6-7.</p> <p>“<i>Active intraocular inflammation</i> (grade trace or above) in the study eye.” Ex.1021, 248.e3.</p>
<p>“(2) <i>active ocular or periocular infection</i>” – i.e. a current infection anywhere on/in the eye (ocular) or surrounding it within its orbit (periocular)</p>	<p>“<i>Active</i> infectious conjunctivitis, keratitis, scleritis, or endophthalmitis <i>in either eye.</i>” Ex.1020, 6-7.</p> <p>“<i>Infectious</i> conjunctivitis, keratitis, scleritis, or endophthalmitis <i>in either eye.</i>” Ex.1021, 248.e3.</p>

See also, Ex.1002, ¶¶127-134. These references were not considered during prosecution of the '572 patent. Ex.1014.

The University of Pennsylvania sponsored the CATT study, which evaluated bevacizumab and ranibizumab. See Ex.1022, NCT00593450; see also, Ex.1002, ¶¶129-131. The web archive of its website provides a document (the “CATT Study”)

listing exclusion criteria for CATT as of July 13, 2010. Ex.1020; Ex.1002, ¶130. Thus, the CATT Study is prior art to the '572 patent under both pre-AIA and AIA 35 U.S.C. § 102. *See also* Ex.1020, 1-2 (showing public availability).

The PIER study (NCT00090623) evaluated the efficacy and safety of ranibizumab (Lucentis®) administered monthly for three months and then quarterly. Ex.1021; Ex.1002, ¶¶132-134. Regillo et al., “Randomized, Double-Masked, Sham-Controlled Trial of Ranibizumab for Neovascular Age-related Macular Degeneration: PIER Study Year 1,” *Am. J. Ophthalmol.*, 145(2): 239-248 (Feb. 2008) (“PIER Study”), published February 2008, describes the PIER study and is prior art to the '572 patent under both pre-AIA and AIA § 102. *Id.*; *see also* Ex.1023-1026 (showing public availability).

### **I. Prior Art Regarding Aflibercept Efficacy**

In addition to the art discussed above, a POSA would have been aware of the results of various Phase I and Phase II trials for AMD and DME for aflibercept from additional references. *See* Ex.1002, ¶¶135-138. For instance, a Regeneron May 1, 2006 Press Release (“2006 Press Release”) discloses a six-week Phase I trial of VEGF Trap-Eye involving a “single intravitreal injection of 0.05, 0.15, 0.5, 1, 2, or 4 milligrams (mg) of VEGF Trap” for treatment of AMD. Ex.1027. It reports that at six weeks—i.e. well within the 24 or 52 week timepoints in the patent—“the two highest dose groups (2 mg and 4 mg) [showed] the mean improvement in BCVA []

13.5 letters, with three of six patients gaining 15 or more letters.” *Id.*, 2; *see also* Ex.1028, Nguyen 2009, at Fig. 3B (showing 14 letter ETDRS gain by Day 15 for 2.0/4.0mg). The results were reported at the ARVO annual meeting and made available on Regeneron’s website. *Id.*, 1; *see also* Ex.1028, Nyugen 2009 (further reporting results, confirming letter score measured by ETDRS).

Similarly, a Regeneron May 8, 2008 Press Release (“2008 Press Release”) describes the Phase II clinical trial data concerning VEGF Trap-Eye for AMD, which “met both primary and secondary key endpoints: a statistically significant reduction in retinal thickness (a measure of disease activity) after 12 weeks of treatment compared with baseline and a statistically significant improvement from baseline in visual acuity (ability to read letters on an eye chart).” Ex.1029, 1-2. It reports that “[r]esults from the Phase II study have shown that VEGF Trap-Eye has the potential to significantly reduce retinal thickness and improve vision.” *Id.* Dixon further reports on these results, noting that they suggest aflibercept is at least as promising as ranibizumab, and referring to aflibercept as the “most promising anti-VEGF investigational drug.” Ex.1009, 1577.

Phase I results for aflibercept for treatment of DME were also reported in Dixon, as well as at the ARVO Annual Meeting in 2007 (“2007 ARVO Abstract”). Five patients with DME were administered a single intravitreal injection of 4 mg VEGF Trap and monitored for 6 weeks following VEGF Trap administration.

Ex.1030, DME ARVO Abstract; Ex.1009. As Dixon notes, BCVA increased by 9 letters at four weeks....” Ex.1009, 1575; *see also*, Ex.1030 (“Four patients had improvements in BCVA, ranging from 6 to 10 letters at 4 weeks post-injection.”).

The Phase II results for aflibercept for DME were then reported at the ARVO Annual Meeting in April, 2010 (“2010 ARVO Abstract”). Ex.1010. In this trial, aflibercept was “dosed at 0.5 mg or 2 mg monthly, 2 mg every eight weeks after three monthly loading doses, or 2 mg on an as-needed (PRN) basis after three monthly loading doses” through 6 months. Ex.1005, 1. It was reported at the ARVO Annual Meeting that “[a]t 6 months [24 weeks], the mean change in BCVA for each VTE arm ranged from +8.5 to +11.4 letters” and that “[n]o significant difference was noted among the VTE arms.” Ex.1010.

## **VIII. DETAILED GROUNDS FOR INVALIDITY**

### **A. Ground I: Claims 15 and 24 Are Anticipated by Each of the 2009 Press Release and December 2010 Press Release**

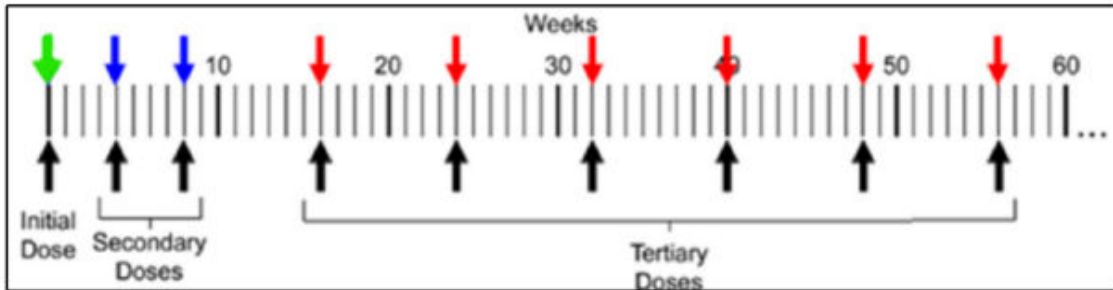
The 2009 Press Release and December 2010 Press Release each anticipate claims 15 and 24 of the ’572 patent. *See* Ex.1002, ¶¶139-144.

Claim 15 recites a dosing regimen for treating a patient with diabetic macular edema in which a “single initial dose of 2 mg of aflibercept” is given, followed by “one or more secondary doses” administered every 4 weeks and “one or more tertiary doses” administered every 8 weeks thereafter. Unlike the other independent claims of the ’572 patent, claim 15 does not specify that a patient maintain or gain visual

acuity. Claim 24 depends from claim 15 and recites that “only two secondary doses are given”—i.e. the patient is administered three initial loading doses and then maintenance doses every 8 weeks.

The 2009 Press Release discloses treating DME with three initial loading doses and then maintenance doses every 8 weeks. It states that “VEGF Trap-Eye is... in Phase 2 development for the treatment of Diabetic Macular Edema (DME). VEGF-Trap dosed at...*2 mg every eight weeks after three monthly loading doses*...is being compared to focal laser treatment.” Ex.1005, 1. Likewise, the December 2010 Press Release discloses the study design and results of the same Phase II clinical trial of aflibercept and states that one of the treatment arms included “patients with clinically significant DME ... receiv[ing] *three initial monthly doses of 2mg of VEGF Trap-Eye (at baseline and weeks 4 and 8), followed through week 52 by ... every two months dosing*...” Ex.1006, 2.

As further illustrated in the annotated version of the sole figure of the '572 patent, the 2009 Press Release and December 2010 Press Release disclose an initial dose (**green**), followed by two secondary doses (**blue**) (for a total of “three monthly doses”), further followed by tertiary doses (**red**) given “every eight weeks” or “every two months” through week 52:



Ex.1002, ¶142. This is precisely the dosing regimen recited by claims 15 and 24— an initial dose at baseline and two secondary doses at weeks 4 and 8, followed by tertiary doses every 8 weeks. *Id.*

Moreover, the Phase II dosing regimen disclosed in the 2009 Press Release and December 2010 Press Release was a method of “treating” patients with DME— i.e. it was “for the purpose” of treating DME. Ex.1002, ¶143-144. In other words, based on its use in a Phase II trial to confirm efficacy and on past results successfully treating DME, the administration of aflibercept according to the Phase II dosing regimen disclosed in the 2009 Press Release and December 2010 Press Release was for the purpose of improving or providing a beneficial effect.<sup>4</sup> *Id.*

Further, consistent with the Board’s prior findings that VEGF Trap-Eye and aflibercept were synonyms for the same drug, the use of VEGF Trap-Eye disclosed

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<sup>4</sup> See also Exs.1011-13.



in the 2009 Press Release and December 2010 Press Release inherently and necessarily disclosed the use of aflibercept.<sup>5</sup> See, Exs.1011-13; Ex.1002, ¶143.

For the forgoing reasons, each of the 2009 Press Release and December 2010 Press Release anticipates every element of claims 15 and 24. Ex.1002, ¶139-144.

**B. Ground II: Claims 1-5, 8-11, 16-17, and 20-21 (Generic/DME Results Claims) Are Anticipated by the December 2010 Press Release**

Claims 1-5, 8-11, 16-17, and 20-21, the “generic/DME Results Claims,” recite the same dosing regimen as claim 15 and require certain visual acuity gains. As discussed in Ground I, the December 2010 Press Release discloses the recited dosing regimen. The December 2010 Press Release further reports the visual acuity gain

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<sup>5</sup> It was understood and known at the time that VEGF Trap-Eye and aflibercept were the same drug, and the protein’s structure is inherent in it. For instance, Dixon expressly teaches that aflibercept and VEGF Trap-Eye have the “same molecular *structure*” (Ex.1009, 3), and Adis (Ex.1015) refers to them interchangeably. See also Ex.1011, ’338 FWD, 34; Exs.1035-37; Ex.1002, ¶¶50-57. Additionally, PO has repeatedly indicated to the Patent Office that they are the same drug. Compare Ex.1038, 3-5 (describing VIEW 1/2) with Ex.1009, 1576 (describing same); see also Ex.1011, ’338 FWD (reviewing PO’s admissions).

results from a Phase II DME clinical trial and anticipates all elements of the generic/DME Results Claims. See Ex.1002, ¶¶145-153.

### 1. Claims 1 and 16

Independent claim 1 and dependent claim 16 require the same loading and maintenance dosing regimen of claim 15, other than the identification of the disease to be treated (generic angiogenic eye disorder in claim 1 v. DME claim 16), and additionally recite “the patient achieves a gain in visual acuity within 52 weeks following the initial dose.” The December 2010 Press Release reports that “[i]n Phase 2 study in DME, patients in all VEGF Trap-Eye Dose groups, including VEGF Trap-Eye dosed every two months, [following three monthly doses], *maintained or increased vision gains through 52 weeks.*” Ex.1006, 1. Specifically, a mean gain of 9.7 letters was achieved by week 52 for the “patients with clinically significant DME ... [who] received three initial monthly doses of 2mg of VEGF Trap-Eye (at baseline and weeks 4 and 8), followed through week 52 by ... every two months dosing...” as shown below:

	Laser	0.5mg monthly	2mg monthly	2mg every two months*	2mg PRN*
n	44	44	44	42	45
Mean change in visual acuity at week 24 versus baseline 1 (letters)	2.5	8.6**	11.4**	8.5**	10.3**
Mean change in visual acuity at week 52 versus baseline (letters)	-1.3	11.0**	13.1**	9.7**	12.0**

\*Following 3 initial monthly doses  
 \*\*p<0.01 versus laser  
 1 Primary endpoint

Ex.1006, 3.

Accordingly, claims 1 and 16 are anticipated by the December 2010 Press Release. *See* Ex.1002, ¶¶147-148.

**2. Claim 2**

Claim 2 depends from claim 1 and recites that “the patient achieves a gain in Best Corrected Visual Acuity (BCVA) according to Early Treatment Diabetic Retinopathy Study (ETDRS) letter score.” As set out in claim 1, the December 2010 Press Release discloses that patients achieved a gain in letters scores that a POSA would have understood were in BCVA according to ETDRS score, given that the December 2010 Press Release describes ETDRS as the “standard chart used in research to measure visual acuity.” Ex.1006, 3; *see also*, Ex.1002, ¶¶149-150.

**3. Claims 3, 8, 10, 17, and 21 and Claims 4, 9, and 20**

Claims 3, 8, 10, 17, and 21 depend from claims 2 and 16 and additionally require that “the patient gains at least [7, 8, or 9] letters Best Corrected Visual Acuity (BCVA) according to Early Treatment Diabetic Retinopathy Study (ETDRS) letter score” within 52 weeks. Claims 4, 9, and 20 require the gain within 24 weeks. As discussed in Section VII.B, the December 2010 Press Release reports that a mean gain of 9.7 letters was achieved by week 52. Ex.1006, 2-3. The December 2010 Press Release also reports that a mean gain of 8.5 letters was achieved by week 24:

	Laser	0.5mg monthly	2mg monthly	2mg every two months <sup>1</sup>	2mg PRN <sup>*</sup>
n	44	44	44	42	45
Mean change in visual acuity at week 24 versus baseline <sup>1</sup> (letters)	2.5	8.6**	11.4**	8.5**	10.3**
Mean change in visual acuity at week 52 versus baseline (letters)	-1.3	11.0**	13.1**	9.7**	12.0**

\*Following 3 initial monthly doses  
\*\*p<0.01 versus laser  
<sup>1</sup> Primary endpoint

Ex.1006, 3; *see also* Ex.1031, Do 2011, Figure 3.

A POSA would have understood that the reported *mean* gain of 8.5 letters necessarily indicated that there were at least *some* patients who had a gain in visual acuity of at least 9 letters, given letters scores are measured in whole letters and the mean is the average of these scores. Ex.1002, ¶152. Accordingly, the December 2010 Press Release anticipates claims 3, 8, 10, 17, and 21 and claims 4, 9, and 20. *See Id.*, ¶¶151-153.

#### 4. Claims 5 and 11

Claim 5 and 11 depend from claims 3 and 10 respectively and additionally recite that “only two secondary doses are administered to the patient.” As discussed in Section VIII.B.3, the December 2010 Press Release anticipates claims 3 and 10, and the additional limitation of “two secondary doses” is disclosed in the December 2010 Press Release as part of the regimen’s use of three initial monthly doses. *See* Ex.1002, ¶¶153.

**C. Ground III: Claims 26-30 (AMD Results Claims) Are Anticipated by the November 2010 Press Release**

Claims 26-30, the “AMD Results Claims,” recite the same loading and maintenance doses of claim 15, but differ with respect to the identification of the disease to be treated (e.g., AMD v. DME) and the efficacy limitations requiring the methods to be “as effective” as monthly administration of ranibizumab. The November 2010 Press Release discloses the Phase III AMD trial design of aflibercept along with the associated efficacy results and anticipates claims 26-30. *See*, Ex.1002, ¶¶154-161.

**1. Claims 26-28**

Claim 26 recites the same dosing regimen as claims 1 and 15, but further recites that the claimed method is “as effective in achieving a gain in visual acuity” as monthly administration of 0.5 of ranibizumab in AMD patients “at 52 weeks.” Dependent claim 27 specifies that only two secondary doses are given, as disclosed in the November 2010 Press Release. Ex.1007, 3-4; *see also* Section VII.C. Dependent claim 28 recites the gain is measured using ETDRS, as also disclosed in the November 2010 Press Release. *Id.*, 4, table reproduced below.

The November 2010 Press Release discloses Phase III AMD clinical trials of aflibercept in which “VEGF Trap-Eye was evaluated for its effect on maintaining and improving vision when dosed as an intravitreal injection on a schedule of ... ***2mg every two months (following three monthly loading doses)***, as compared with

intravitreal ranibizumab administered 0.5 mg every month during the first year of the studies.”<sup>6</sup> Ex.1007, 3. This is exactly the dosing regimen recited by claims 26-28. *See* Ex.1002, ¶¶155-159; *see also*, Ground I.

As to the “results limitation,” for the purposes of this petition only, Petitioner assumes that monthly ranibizumab produces a mean gain of visual acuity between 8.1-9.4 letters as reported in Table 1 of the ’572 patent (Ex.1001, 13:5-40).<sup>7</sup> The November 2010 Press Release reports a mean improvement/gain in visual acuity between 7.9 and 8.9 letters for patients receiving bimonthly doses of 2 mg aflibercept after three initial monthly doses at Week 52, which it identifies as statistically noninferior to monthly ranibizumab. Ex.1007, 4. Notably, these are the same values as reported in Table 1 of the ’572 patent, which also identifies these results as non-significantly different than the reported ranibizumab results. Ex.1001, col 13:5-35. The November 2010 Press Release summarizes the efficacy results as shown below:

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<sup>6</sup> As noted in fn. 5, it was understood at the time that VEGF Trap-Eye and aflibercept were the same drug.

<sup>7</sup> Petitioner reserves the right to challenge this “results limitation” as indefinite.

	Ranibizumab 0.5mg monthly	VEGF Trap-Eye 0.5mg monthly	VEGF Trap-Eye 2mg monthly	VEGF Trap-Eye 2mg every 2 months
<b>Maintenance of vision* (% patients losing &lt;15 letters) at week 52 versus baseline</b>				
VIEW 1	94.4%	95.9%**	95.1%**	95.1%**
VIEW 2	94.4%	96.3%**	95.6%**	95.6%**
<b>Mean improvement in vision* (letters) at 52 weeks versus baseline (p-value versus ranibizumab 0.5mg monthly)***</b>				
VIEW 1	8.1	6.9 (NS)	10.9 (p<0.01)	7.9 (NS)
VIEW 2	9.4	9.7 (NS)	7.6 (NS)	8.9 (NS)

\* Visual acuity was measured as the total number of letters read correctly on the Early Treatment Diabetic Retinopathy Study (ETDRS) eye chart

\*\* Statistically non-inferior based on a non-inferiority margin of 10%, using confidence interval approach (95.1% and 95% for VIEW 1 and VIEW 2, respectively)

\*\*\* Test for superiority

NS=non-significant

Ex.1007, 4; *id.* at 1 (“VEGF Trap-Eye dosed every two months [after three monthly doses], *successfully met the primary endpoint compared to the current standard of care, ranibizumab dosed every month.* The primary endpoint was statistical noninferiority in...patients who *maintained (or improved) vision over 52 weeks compared to ranibizumab.*”) Ex.1007, 1.

Given its use in a Phase III trial to confirm efficacy for regulatory approval and a number of successful past clinical trials, the administration of aflibercept according to the November 2010 Press Release was a method of “treating” patients with AMD as the term was understood by a POSA. Accordingly, the November 2010 Press Release anticipates claims 26-28. *See*, 1002, ¶¶155-15.

## 2. Claims 29-30

Claim 29 recites the same dosing regimen as claims 1, 15, and 26 but further recites that the claimed method is “as effective in maintaining visual acuity” as monthly administration of 0.5 of ranibizumab in AMD patients “at 52 weeks.” The

claims refer to “*a* patient,” and the patent does not disclose what it means to be “as effective” as monthly ranibizumab for an individual patient. For the purposes of this petition only, Petitioner assumes that monthly ranibizumab produces a gain of visual acuity between 8.1-9.4 letters and prevents a loss of more than 15 letters, which is the result reported in Table 1 of the ’572 patent. Ex.1001, 13:5-35. Claim 30 further specifies that such maintenance “means loss of less than 15 letters” BCVA as measured by ETDRS. Accordingly, the November 2010 Press Release only need to disclose that its dosing regimen prevented loss of more than 15 letters BCVA in *some* patients in order to be “as effective in maintaining visual acuity” as monthly ranibizumab at 52 weeks.

The November 2010 Press Release states that “[m]aintenance of vision was defined as losing fewer than three lines (equivalent to 15 letters) on the ETDRS eye chart” in the Phase III AMD trial, and that maintenance was achieved. *Id.*, 2. Specifically, the November 2010 Press Release reports that 95.1-95.6% of patients who received bimonthly doses of 2mg aflibercept followed by three initial monthly doses achieved maintenance of vision at week 52, which is comparable to 94.2% reported for the monthly ranibizumab arm. Moreover, as noted above, the claimed dosing regimen disclosed in the November 2010 Press Release not only maintained visual acuity, but also produced additional visual acuity gains that were comparable to those of the monthly ranibizumab arm. Therefore, the recited dosing regimen



disclosed in the November 2010 Press Release was “as effective in maintaining visual acuity” as the monthly ranibizumab. The November 2010 Press Release anticipates claims 29-30. *See*, Ex.1002, ¶¶160-161.

**D. Ground IV: Claims 1-5, 8-11, and 26-30 (Generic/AMD Results Claims) Are Rendered Obvious by Dixon Alone or In View of the 2006 Press Release**

Dixon discloses all of the limitations of independent claims 1, 26, and 29, other than the “results limitations.” Ex.1002, ¶¶162-165.

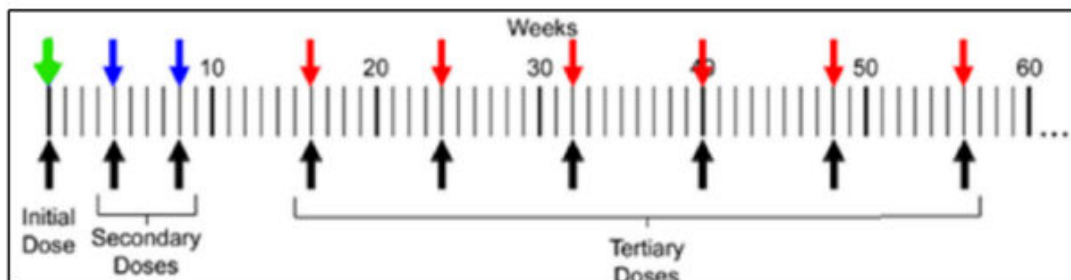
Dixon teaches administering the recited dosing regimen to a patient for the purpose of treating an angiogenic eye disorder, including AMD. Ex.1009; Ex.1002, ¶163. Dixon teaches that “VEGF Trap-Eye is a novel anti-VEGF drug currently in commercial development *for the treatment* of neovascular AMD by Regeneron Pharmaceuticals, Inc. (Tarrytown, NY, USA)...” Ex.1009, 1573, 1575-77 (emphasis added); *see generally* Ex.1002, ¶162-165.

As to the specific dosing regimen, Dixon discloses that the Phase III study “will evaluate the safety and efficacy of intravitreal VEGF Trap-Eye at doses of... **2.0 mg at an 8 week dosing interval (following three monthly doses)**...” Ex.1009, 1576 (emphasis added).<sup>8</sup> As shown below in an annotated version of the sole ’572

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<sup>8</sup> Dixon expressly teaches that aflibercept and VEGF Trap-Eye have the “same molecular *structure*.” Ex.1009, 1575. *See also* fn. 5, *supra*.

Figure, Dixon discloses an initial dose (green), followed by two secondary doses (blue) (for a total of “three monthly doses”), further followed by tertiary doses (red) given at an “8 week dosing interval”:



While Dixon does not expressly disclose the “results limitations” in independent claims 1, 26, or 29 or their dependents, it renders them obvious alone or in view of the knowledge of a POSA regarding aflibercept efficacy, as discussed below. *See* Ex.1002, ¶¶162-165.

### 1. Claim 1

Independent claim 1 recites that “the patient achieves a gain in visual acuity within 52 weeks following the initial dose.” Notably, for claim 1 and all of the Results Claims other than claims 26-30, there is no requirement that a patient maintain any visual acuity gain for a set duration—only that the patient “achieves the gain *within*” the recited time period—here 52 weeks. Nor is there any requirement that every patient achieve the recited gain, only that such gains would be obvious for some patients receiving the dosing regimen—i.e. for “a patient.” *See*, Ex.1002, ¶166-167.

As an initial matter, as set out in Section VII, POSAs knew from the Phase I trial of aflibercept reported in the 2006 Press Release, that a single 2 mg dose in AMD patients produced a “mean improvement in BCVA [] 13.5 letters, with three of six patients gaining 15 or more letters” at six weeks. Ex.1027, 2. The described gain is “within” 52 weeks, and thus a POSA would have expected a visual acuity gain “within 52 weeks” for some patients from administration of the first dose in Dixon’s dosing regimen alone. *See* Ex.1002, ¶168.

Additionally, the secondary endpoint of the VIEW 1 study for AMD, which used the dosing regimen described in Dixon, was the “proportion of patients who gained at least 15 letters of vision at week 52” as measured by ETDRS. Ex.1005, 1. A POSA would have found a visual acuity gain within the first 52 weeks for some patients receiving the Dixon dosing routine obvious and expected based on this knowledge. Ex.1002, ¶169. Additionally, Petitioner incorporates herein its discussion of claims 3-4 and 8-10 below, which address specific visual acuity gains and further demonstrates the obviousness of claim 1.

## **2. Claim 2**

Dixon describes the visual acuity gains as BCVA according to ETDRS score throughout, and ETDRS is the “standard chart used in research to measure visual acuity.” *See, e.g.*, Ex.1009, 1576; *see also* Ex.1002, ¶170; Ex.1006, 3. Thus, a POSA would have found obvious to measure a gain in BCVA according to ETDRS

letter score in the prior art clinical trials.

### 3. Claims 3-4 and 8-10

Claims 3-4 and 8-10 additionally require that “the patient gains at least [7, 8, or 9] letters Best Corrected Visual Acuity (BCVA) according to Early Treatment Diabetic Retinopathy Study (ETDRS) letter score” within 52 weeks or 24 weeks. Accordingly, if it was obvious to a POSA that a visual acuity gain of 9 letters would be achieved at least for some patients within 24 weeks, all of these claims are rendered obvious. *See* Ex.1002, ¶171-174.

As discussed above in claim 1, a POSA would have reasonably expected a gain of at least 15 letters—not just nine—for some patients within the first six weeks of treatment via the Dixon regimen (i.e. after at least the first dose). This is because the reported Phase I results for aflibercept showed 15 letter gains from a single 2mg/4mg injection. Ex.1002, ¶172; Ex.1027. This disclosures renders these additional claim limitations obvious. *Id.*

Additionally, as discussed further in connection with claims 26-28, Dixon reports Phase II results showing that AMD patients who received four initial monthly doses followed by PRN dosing received only an average of 1.6 additional injections through 52 weeks (for a total of ~5.6 doses in a year on average). These patients achieved a mean of 9 letter gains, **with 29% gaining greater than 15 letters**, by 52 weeks. Ex.1009, 1576; *see also* Ex.1002, ¶173.

A POSA would have reasonably expected that at least some AMD patients, including those that achieved at least 15 letter gains, would have achieved a 9 letter visual acuity gain at some point during the first 24 weeks treatment via the Dixon dosing regimen based on knowledge of the effectiveness of a single dose and the further Phase II results. Ex.1002, ¶174. Dixon’s loading/maintenance schedule would result in 8 overall doses during the year—two more doses than had been shown to produce 15 letter gains in over 1 in 4 patients. *Id.*

#### **4. Claims 5 and 11**

Claim 5 and 11 depend from claims 3 and 10 respectively and additionally recite that “only two secondary doses are administered to the patient.” As discussed in Section VIII.D.3, Dixon renders obvious claims 3 and 10 and discloses the use of three monthly loading doses—an initial dose and “only two secondary doses.” Ex.1009, 1576; *see also* Ex.1002, ¶175.

#### **5. Claims 26-28**

Claim 26 recites the same dosing regimen as claims 1 and 15, but further recites that the claimed method is “as effective in achieving a gain in visual acuity” as monthly administration of 0.5 of ranibizumab in AMD patients “at 52 weeks.” Dependent claim 27 specifies only two secondary doses are given, as disclosed in Dixon. *See* Section VII.D; Ex.1009. Dependent claim 28 recites the gain is measured using ETDRS, as also disclosed in Dixon. *Id.*; *see also* Ex.1002, ¶176.

As noted above, for purposes of this petition only, Petitioner assumes that to be “as effective” as monthly ranibizumab, a patient must achieve a gain of visual acuity between 8.1-9.4 letters, as reported in Table 1 of the ’572 patent (Ex.1001, 13:5-35).

As discussed in connection with claims 1 and 3-4 and 8-10, Dixon renders obvious a substantially higher gain than 8.1-9.4 letters for some patients. Dixon reports that in the Phase II trial, AMD patients who received four initial monthly doses, followed by PRN dosing, received only an average of 1.6 additional injections beyond the initial doses through 52 weeks (for a total of ~5.6 doses in a year on average). Ex.1009, 1576. These patients achieved a mean of 9 letter gains, *with 29% gaining greater than 15 letters, by 52 weeks.* *Id.*; see also, Ex.1002, ¶178.

A POSA would have found it obvious to apply the Dixon regimen to achieve the recited gains, and reasonably expected that when aflibercept, which produced superior gains and was known as the “most promising” anti-VEGF drug under investigation (Ex.1009, 1577), was administered according to the Dixon regimen, at least some AMD patients would have achieved the recited lower 7-9 letter gains using three initial monthly doses followed by 8-week maintenance dosing. Ex.1002, ¶¶179-181. This is because, as noted above, Dixon’s dosing regimen (3 initial monthly doses followed by 5 bi-monthly doses through week 52; 8 total) requires two additional doses than the Phase II PRN dosing regimen (4 initial monthly doses

followed by 1.6 PRN doses; 5.6 total), which had already shown to achieve 15 letter gains for some patients. Ex.1009, 1576; Ex.1002, ¶¶179-181. In view of the Phase II PRN efficacy results, a POSA would have expected the additional doses of the Dixon regimen to produce similar gains and certainly substantially higher gains than just 8.1-9.4 letters. Ex.1002, ¶¶179-181.

Alternatively, a POSA would have found it obvious to modify the Dixon dosing regimen to include additional initial doses, for the same reasons addressed in relation to claim 25—i.e. because such a modification was routine for a POSA. *See, e.g.*, Ex.1017, 23-24. Modifying the dosing regimen to provide four initial doses, for instance, would bring Dixon further closer to the Phase II regimen, but would provide five additional doses during the remaining 52 week period, rather than only the 1.6 mean doses given in the Phase II trial. *See* Ex.1002, ¶182. This would only serve to increase a POSA’s reasonable expectation of producing a gain as effective as monthly ranibizumab. *Id.*

## **6. Claims 29-30**

Claim 29 recites the same dosing regimen as claims 1, 15, and 26 but further recites that the claimed method is “as effective in maintaining visual acuity” as monthly administration of 0.5 of ranibizumab in AMD patients “at 52 weeks.” Dependent claim 30 further specifies that such maintenance “means loss of less than 15 letters” BCVA as measured by ETDRS. Accordingly, a POSA would need only

to find it obvious that Dixon’s dosing regimen merely prevented loss of more than 15 letters BCVA in some patients in order to be “as effective in maintaining visual acuity” as monthly ranibizumab at 52 weeks. As set out immediately above, a POSA would have found it obvious to apply Dixon’s dosing regimen to produce visual acuity gains, not just maintenance above a loss of 15 letters. And because VEGF Trap-Eye/aflibercept has “higher binding affinity” to VEGF and likely “longer duration of effect in the eye” than ranibizumab, a POSA would have expected the maintenance of vision to be comparable to monthly ranibizumab. Ex.1009, 1577. Thus, for the same reasons recited above, these claims are obvious. *See*, Ex.1002, ¶183.

**E. Ground V: Claims 16-17, and 20-21 Are Rendered Obvious by the 2009 Press Release Alone or in View of the 2007 ARVO Abstract, Dixon and/or the 2010 ARVO Abstract (collectively “Ground V References”)**

As set out above in Section VIII.A, the 2009 Press Release discloses every limitation of claim 15. The DME Results Claims depend from claim 15. Claim 16 recites a “gain in visual acuity within 52 weeks,” while dependent claim 17 specifies the gain is at least 9 letters of BCVA in ETDRS. Dependent claim 21 recites the gain is lower—only 8 letters. Claim 20 depends from claim 17. Claim 17 recites a gain of 9 letters, and claim 20 further recites that the patient achieves the gain “within 24 weeks,” not 52. Accordingly, the 2009 Press Release need only render obvious a gain of 9 letters within 24 weeks to render all of the DME Results Claims obvious.



See Ex.1002, ¶¶184.

A POSA would have found it obvious to treat a patient via the disclosed regimen to achieve the recited 9 letter gain within 24 weeks, and would have expected that at least some patients, when treated via the 2009 Press Release dosing regimen, would achieve a 9 letter gain, which was modest compared to known gains for aflibercept and other anti-VEGF agents. Ex.1002, ¶¶185-190. As noted above, the Results Claims do not require the dosing regimen to apply to all patients populations in a one-size-fits-all approach. Instead, the claims are directed to a “method for treating diabetic macular edema in *a* patient.” See Section V.C. Nor do they require that a patient maintain any visual acuity gain for a set duration—only that the patient “achieves the gain *within*” the recited time period—here 24 or 52 weeks.

As an initial matter, the 2009 Press Release discloses that, in the context of the VIEW 1 study for AMD, which involved the use of three monthly loading doses followed by 8-week dosing intervals, a secondary endpoint is the “proportion of patients who *gained at least 15 letters* of vision at week 52” as measured by ETDRS. Ex.1005, 1. As to the Phase II trial for the treatment of DME, the 2009 Press Release explains that the “primary efficacy endpoint evaluation is mean *improvement* in visual acuity at *six months*.” *Id.*; see also, Ex.1002, ¶186.

A POSA would have found it obvious to use the regimen disclosed for the

Phase II trial for treatment of DME, involving the same number of initial loading doses as the VIEW 1 study, and would have expected to produce similar improvement *for at least some patients* as was expected to be produced in the VIEW 1 study. In other words, there would be nothing unexpected about a patient losing no less than or gaining at least 15 letters of vision (even if others did not). Ex.1002, ¶187.

This is particularly so given that, as set out in Section VII and reported in the ARVO 2007 Abstract and Dixon, it was known from the Phase I trial of aflibercept that a single 4mg dose in DME patients produced a “9 letters [gain in EDTRS] at four weeks....,” well before the 24 week time frame recited in claim 20. Ex.1009, 1575; Ex.1030 (“Four patients had improvements in BCVA, ranging from 6 to 10 letters at 4 weeks post-injection.”); Ex.1002, ¶189. A POSA would have reasonably expected the same gain would be produced by an initial set of three 2mg loading doses instead of a single 4mg dose, particularly given the successful use of initial loading doses in the context of AMD trials. *See* Section VII; *see also* Ex.1002, ¶¶43-49, 188 (explaining similarity in mechanism of action and results for AMD, DME).

Finally, a POSA would have found their expectation confirmed by data reported in April 2010 at the ARVO Annual Meeting in the 2010 ARVO Abstract. *See*, Ex.1002, ¶190. It was reported there that POSAs knew that that “[a]t 6 months [i.e. 24 weeks], the mean change in BCVA for each VTE arm ranged from +8.5 to

+11.4 letters” gains had been achieved in the DME clinical trials described in the 2009 Press Release. Ex.1010, 1. This would confirm that it was obvious to apply the disclosed regimen, as well as a POSA’s reasonable expectation that the 2009 Press Release regimen would produce 9 letter gains by 24 weeks.

**F. Ground VI: Claims 6-7 and 12-13 Are Rendered Obvious by Each of Dixon in View of Hecht, Dixon in View of the 2006 Press Release and Hecht, and the December 2010 Press Release in View of Hecht**

Claims 6-7 and 12-13 depend from claims 3 and 10 respectively and recite that the aflibercept is formulated as “an isotonic solution” and with a “nonionic surfactant.” As set out in Grounds II and IV, claims 3 and 10 are anticipated by the December 2010 Press Release and rendered obvious by Dixon alone or in view of the 2006 Press Release. A POSA would have found the use of an isotonic formulation and nonionic surfactant in the disclosed formulation in these primary references obvious. Ex.1002, ¶¶191-194.

For instance, Dixon teaches that aflibercept is “formulated with different buffers and at different concentrations (for buffers in common) suitable for the comfortable, non-irritating, direct injection into the eye.” Ex.1009, 1575. Dixon’s disclosure is consistent with how a POSA would have understood the aflibercept formulation in each primary reference. Ex.1002, ¶192. In particular, a POSA would understand that a non-isotonic formulation would irritate a patient’s eye, and would expect an isotonic formulation to be used. *Id.*

This is confirmed by Hecht, which teaches the principles of formulation for ophthalmic solutions and specifically notes that such solutions must be “formulated to be sterile, *isotonic* and buffered for stability and comfort.” Ex.1016, 1569; *Id.*, 1571 (“[I]sotonicity always is desirable and particularly is important in intraocular solutions.”). A POSA would have been motivated to make the aflibercept solution disclosed in the primary references isotonic to avoid irritation and would have a reasonable expectation in doing so, particularly given aflibercept was already known to be administered intravitreally. Ex.1002, ¶193.

Similarly, Hecht teaches that non-ionic surfactants are the “least toxic to ophthalmic tissues,” “[a]id in achieving solution clarity,” and can serve as “cosolvents to increase solubility.” Ex.1016, 1571. Such surfactants also stabilize proteins such as aflibercept. Ex.1002, ¶194 (citing Ex.1032, 159). A POSA would have found it obvious that the formulations disclosed in the primary references would include a nonionic surfactant, would have been motivated to formulate aflibercept to achieve the known benefits, and would have had a reasonable expectation of doing so given aflibercept was already known to be administered intravitreally and had been formulated with a non-ionic surfactant for other uses. *Id.*, (citing Ex.1033 (Fraser), 1115).

**G. Ground VII: Claims 18-19 and 22-23 Are Rendered Obvious by Each of the December 2010 Press Release in View of Hecht, and the 2009 Press Release in View of the Ground V References and Hecht**

Claims 18-19 and 22-23 depend from claims 17 and 21 respectively and recite the same “an isotonic solution” and “nonionic surfactant” limitations addressed above. As set out in Grounds II and V, claims 17 and 21 are anticipated by the December 2010 Press Release and rendered obvious by the 2009 Press Release alone or in view of the Ground V References. For the same reasons set out in Ground VI (which is incorporated herein), these references in combination with Hecht render claims 18-19 and 22-23 obvious. Ex.1002, ¶195.

**H. Ground VIII: Claim 14 Is Rendered Obvious by Each of Dixon and the December 2010 Press Release Alone or In View of the CATT Study and/or PIER Study**

As set out in Section VI.B, the exclusion criteria should not be given patentable weight. Accordingly, these claims are rendered obvious for the same reasons as set forth in Grounds II and IV. Even if the exclusion criteria are given patentable weight, claim 14 is obvious. While the primary references do not recite exclusion criteria, the criteria were well known in the art and are disclosed therein. *See*, Ex.1002, ¶¶62-69, 196-203.

Specifically, the CATT and PIER Studies (Exs. 1020-26) described above in Section VII.H, included exclusion criteria for clinical trials of the leading intravitreally injected anti-VEGF treatments at the time. The exclusion criteria

disclosed in these studies are the same as those claimed by the '572 patent, as is shown in Table 1 above in Section VII.H. There is nothing special regarding these criteria, and applying them in combination with the methods as described in connection with Grounds II and IV-V above renders the claimed method obvious. Ex.1002, 196-203.

Finally, POSAs would have been motivated to adopt the exclusion criteria in order follow the standard of care, as well as to solve a problem that references such as the 2009 Press Release and Dixon outline directly. *See* Ex.1002, ¶¶200-203. Applying the criteria would only increase a POSA's expectation of success in treatment. Ex.1021, 247; Ex.1034, Lucentis Label, 1; *see* Ex.1002, ¶¶200-203.

**I. Ground IX: Claim 25 is Rendered Obvious by the 2009 Press Release Alone or in View of Shams or Elman 2010**

Claim 25 depends from independent claim 15 and specifies that “four secondary doses are administered to the patient,” meaning the dosing regimen consists of five initial monthly doses, followed by 8-week maintenance dosing (no “results limitations” are recited). This amounts to the same dosing regimen recited in the DME claims challenged in Samsung's '601 IPR (IPR2023-00739) and Petitioner's “copycat” IPR (IPR2024-00201).

The 2009 Press Release explicitly describes administering 2 mg aflibercept to treat DME using a number of different dosing regimens, including one consisting of three monthly loading doses followed by maintenance doses at 8-week intervals.

Ex.1005.

The 2009 Press Release alone or in combination with Shams or Elman 2010 renders obvious claim 25. Ex.1002, ¶¶204-237. There is no special benefit taught in the '572 patent to using five loading doses as opposed to two, three, four, six, or more loading doses. The '572 patent states that “[t]he methods of the invention may comprise administering to the patient *any number* of secondary and/or tertiary doses of a VEGF antagonist” including “e.g. 2, 3, 4, 5, 6, 7, 8, or more.” Ex.1001, 4:22-32.

Five loading doses is simply the number that works for *some* patients, and, importantly, the claims do not require the dosing regimen to apply to all patient populations in a one-size-fits-all approach. Nor could they, as there is no data in the patent supporting such a conclusion. Thus, the claims are directed to a “method for treating diabetic macular edema in *a patient* in need thereof,” not an entire patient population or a percentage thereof, because that is all the specification describes. See Section V.C.

As set out above, the 2009 Press Release describes using three monthly loading doses followed by 8-week maintenance doses, among other regimens. Ex.1005, 1. While three might be appropriate for some patients, a POSA would have understood that other patients would benefit from additional loading doses, including five monthly loading doses, and been motivated to provide those

additional doses. Indeed, one of the other regimens recited in the 2009 Press Release is PRN (“as needed”) dosing after three monthly doses, which requires routine monitoring and reinjection when needed. Ex.1005, 1.

Using five monthly loading doses is thus a trivial and routine modification that amounts to the addition of a single monthly injection between the last loading dose and first maintenance dose described in the 2009 Press Release. *See* Ex.1002, ¶¶204-212. A POSA would have found this sort of routine dose optimization obvious for patients still obtaining gains for monthly dosing, and it was also taught in the prior art. *Id.*; *see generally*, Ex.1002 ¶¶58-61.

In fact, the Shams reference explains that “[t]he specific time schedule [for administering doses of an anti-VEGF agent] can be readily determined by a physician having ordinary skill in administering the therapeutic compound **by routine adjustments....**” Ex.1017, 23-24 (emphasis added). It further explains that “the time of administration of the number of first individual and second individual doses as well as subsequent dosages is adjusted to minimize adverse effects while maintaining a maximum therapeutic effect.” *Id.* The 2009 Press Release alone or in view of Shams thus renders the routine modification to five doses obvious. *See* Ex.1002, ¶¶204-216.

Similarly, the 2009 Press Release in combination with the teachings of Elman 2010 render the claims obvious. Ex.1002, ¶¶217-237. In the Elman 2010 trial, one



of the subject groups was given four initial monthly loading doses, after which a clinician evaluated the subjects to determine if a fifth monthly dose of ranibizumab should be given. Ex.1018, Elman 2010. Elman 2010 reports that *at least 78% of patients received a fifth loading monthly dose*. *Id.*, 4 (reporting that only 22% of patients did not receive a fifth dose). In view of Elman 2010, a POSA reviewing the 2009 Press Release’s description of using three monthly loading doses would have been motivated to use the five loading doses that were shown by Elman to be efficacious in the vast majority of patients. *See* Ex.1002, ¶¶222-230

Notably, as set out above, to show the obviousness of the claims here, there is no requirement that a POSA would have been motivated to adopt five initial loading doses for *all* patients. But even if it were, based on the teaching of Elman 2010 that a fifth initial monthly loading dose was desirable for at least 78% of patients in the relevant group, Elman 2010 would make five initial loading doses an obvious starting point for the treatment of all patients, even if in routine practice a POSA would in fact adjust the regimen from there. Ex.1018.

Finally, POSAs would have had a reasonable expectation of success in making and using the claimed combination, resulting in five initial loading doses instead of the three described in the 2009 Press Release.<sup>9</sup> Ex.1002, ¶¶231-237. The

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<sup>9</sup> There is no requirement of certainty; “[f]or obviousness under § 103, all that is

2009 Press Release’s disclosure of a Phase II trial using loading and maintenance dosing of aflibercept to treat DME would provide a POSA with a reasonable expectation of success that such a regimen would work, including the use of maintenance dosing. The claimed combination merely *adds* one additional dose to the DME regimen with 3 monthly loading doses followed by 8-week maintenance doses disclosed in the 2009 Press Release. Ex.1002, ¶¶210, 231-237. Moreover, Elman 2010 already had shown the effectiveness of treating DME via ranibizumab, and aflibercept had already been compared to ranibizumab in clinical trials and shown the same or better effectiveness. *Id.*; Ex.1009; Ex.1005.

## **J. Grounds X and XI**

### **1. The “Results Limitations” in the Results Claims Are Not Entitled to Patentable Weight**

The independent claims of the Results Claims contain “results limitations” which recite “wherein the patient achieves...”, “wherein the patient gains...”, or “wherein the method is as effective....” Because they appear in “wherein” clauses and are not recited as an affirmative step, to be positive limitations entitled to patentable weight, the “results limitations” must provide structure or acts necessary to define the invention. *In re Kubin*, 561 F.3d 1351, 1353 (Fed. Cir. 2009). But

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required is a reasonable expectation of success.” *In re O’Farrell*, 853 F.2d 894, 903 (Fed. Cir. 1988).

while these clauses might *imply* some affirmative act, such as measuring the patient’s visual acuity, they do not *require* one. The “results limitations” plainly state *only* a result—i.e. “wherein the patient *achieves...*”, etc. They are thus not entitled to patentable weight.

Specifically, these limitations in the Results Claims do not change or alter *any* steps of the method, and thus are not entitled to patentable weight. Instead, the claim defines the affirmative steps of the method by specifying the dosing regimen, and the “wherein” clauses are merely an intended result, nothing more. *Id.* PO chose to claim the “results limitations” in this manner; it should not now be allowed to rewrite the “wherein” clauses as anything other than intended results.

Indeed, the district court in the Mylan Litigation applied the same reasoning in finding that the “Best Corrected Visual Acuity” limitations of the Challenged Claims lacks patentable weight. Ex.1063, 37-39 (finding that the BCVA limitation is informational, does not change the manipulative steps of the claims, and has no patentable weight.). Specifically, the court noted “[t]here is no change or modification to the underlying dosing regimen if the [BCVA gain] test result is obtained, or not” and “[a]n old method of treating patients cannot be made new by describing the results that a patient can get from the treatment method whether those results involve...achieving certain test results.” *Id.*

The same conclusion is warranted here. Intended results should not be given

patentable weight. *See Syntex (U.S.A.) LLC v. Apotex, Inc.*, 407 F.3d 1371, 1378 (Fed. Cir. 2005) (holding that “in a stabilizing amount” as recited in the body of a claim was non-limiting because it “simply describes the intended result of using the weight to volume ratios in the claims); *Bristol-Myers Squibb Co. v. Boehringer Ingelheim Corp.*, 86 F. Supp. 2d 433, 443 (D.N.J. Mar. 2, 2000) *aff’d in relevant part*, 246 F.3d 1368, 1376 (Fed. Cir. 2001) (holding “reduced hematologic toxicity” not limiting as a matter of claim construction because it did not “result in a manipulative difference in the steps of the claim.”); *In Re: Copaxone Consol. Cases*, 906 F.3d 1013 (Fed. Cir. 2018).

Petitioner notes that while the Board relied on *Los Angeles Biomedical Research Institute at Harbor-UCLA Medical Center v. Eli Lilly & Co.*, 849 F.3d 1049 (Fed. Cir. 2017) (“*UCLA.*”) in ruling on Apotex’s ’572 Petition, the claims here are meaningfully different from those in *UCLA* in ways not identified by Apotex.

In *UCLA.*, the Federal Circuit accorded patentable weight to a claim with two steps, the second of which recited “b) arresting or regressing the at least one of the penile tunical fibrosis and corporal tissue fibrosis, wherein the PDE-5 inhibitor is administered at a dosage up to 1.5 mg/kg/day for not less than 45 days.” *Id.*, 1060-61. The Federal Circuit held that the “arresting or regressing language” should be given patentable weight for at least two reasons, neither of which apply here.

First, the Federal Circuit reasoned that “[w]hile not dispositive, it is significant that the phrase ‘arresting or regressing the [penile] fibrosis’ is drafted as part of a separate step of the method....” *Id.*, 1061. The Federal Circuit held this distinguished the structure of the claims at issue from past cases where the relevant language appeared in the “structure of patent claims in which statements of general purpose” were made, such as the preamble, and were held to be non-limiting. *Id.*

Second, the Federal Circuit also noted that “[b]ecause the ’903 patent claims specify only a maximum dosage level and a minimum treatment period, it is different from cases in which the claims contain express dosage amounts as material claim limitations.” *Id.*

Neither of the reasons the Federal Circuit gave for finding the language limiting apply here.

**First**, as noted above, the relevant language is not recited as “part of a separate step of the method,” but rather as part of “wherein” clauses—i.e. “[w]herein the patient achieves...” a result. “A whereby [or wherein] clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited” or that is otherwise inherent. *Minton v. Nat’l Ass’n. of Sec. Dealers, Inc.*, 336 F.3d 1373, 1381 (Fed. Cir. 2003); *see also Lockheed Martin Corp. v. Space Systems/Loral, Inc.*, 324 F.3d 1308, 1319 (Fed. Cir. 2003) (language only stated an inherent result); *Kubin*, 561 F.3d, 1357 (irrelevant whether prior art

disclosed a feature “wherein the polypeptide binds CD48” when feature was necessarily present in protein).

“Wherein” clause language must provide structure or acts necessary to define the invention to be a positive limitation. *Kubin*, 561 F.3d, 1353. Here, as set out above, the “results limitations” language does not define the invention—it provides no “structure or acts” at all, just results of practicing the claimed method.

*Second*, and unlike the claims in *UCLA*. which specified “only a maximum dosage level and a minimum treatment period,” the claims here “contain express dosage amounts [2mg] as material claim limitations, and in which efficacy is ‘inherent in carrying out the claim steps.’” *Id.*, 1061. There is thus no need to give patentable weight to the language to put a limit on the scope of the claim, as was done in *UCLA*.

Accordingly, Petitioner respectfully submits that the “results limitations” in the Results Claims lack patentable weight.

**2. Ground X: Claims 1-5, 8-11, and 26-30 are Anticipated by Dixon Because the “Results Limitations” Lack Patentable Weight**

As set out in Ground IV, Dixon expressly discloses all of the limitations of the Generic/AMD Results Claims other than the “results limitations.” These limitations are not entitled to patentable weight as set out in Section VIII.J.1 above, and thus Dixon anticipates these claims for the reasons set out in Ground IV. *See*

Ex.1002, ¶238.

**3. Ground XI: Claims 1-5, 8-11, 16-17, and 20-21 are Anticipated by the 2009 Press Release Because the “Results Limitations” Lack Patentable Weight**

As set out in Ground V, the 2009 Press Release expressly discloses all of the limitations of the Generic/DME Results Claims other than the “results limitations.” As set out immediately above, these limitations are not entitled to patentable weight, and thus the 2009 Press Release anticipates these claims for the reasons set out in Ground V. Ex.1002, ¶239.

**K. There Are No Secondary Considerations**

Finally, though it is not Petitioner’s burden, PO cannot establish secondary considerations that would support a finding of non-obviousness, and particularly it cannot overcome the strong *prima facie* case of obviousness presented in Grounds IV-IX. *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010); Ex.1002, ¶¶240-245.

***No Unexpected Results.*** PO’s anticipated argument—asserted during prosecution of related claims in the family (Ex.1055, ’681 patent PH, 488- 493)—that the less frequent regimen of the Challenged Claims produced “unexpected results” is incorrect. *Ormco Corp. v. Align Tech., Inc.*, 463 F.3d 1299, 1311-12 (Fed. Cir. 2006); *In re Kao*, 639 F.3d 1057, 1068-69 (Fed. Cir. 2011); Ex.1002, ¶242. As set out in Sections VIII.D-E and VIII.I, the Results Claims recite obvious results

based on the disclosure of the claimed method.

***No Long-Felt, Unmet Need.*** PO cannot establish a “need” or show that any such need was “long-felt.” Any purported need for the claimed dosing regimens had been fulfilled long before the ’572 patent was filed. Ex.1002, ¶243. Indeed, POSAs had been implementing such regimens for DME and AMD well before the priority date. *Id.* And other successful, intravitreally injected anti-VEGF treatments existed. *Id.*

***No Nexus.*** PO cannot establish nexus to the “merits of the claimed invention” of the ’572 patent because the art discloses all of the claimed elements. *Novartis AG v. Torrent Pharms. Ltd.*, 853 F.3d 1316, 1330–31 (Fed. Cir. 2017) (citing *Kao*, 639 F.3d at 1068). There is no “novel combination or arrangement of known individual elements” in the recited limitations—rather, they are routine. Ex.1002, ¶244.

## **IX. DISCRETIONARY DENIAL IS UNWARRANTED**

### **A. The *Advanced Bionics* and *Becton Dickinson* Factors Do Not Favor Denial Under 35 U.S.C. § 325(d)**

Petitioner acknowledges that the Board has already addressed § 325(d) in its Institution Decision in the Samsung IPR. Accordingly, Petitioner relies on the Board’s findings therein, (Ex.1066, 72-77), and provides here an abbreviated summary of the factual record and argument set forth in the Samsung Petition. Ex.1070, 76-78.

On the first *Advanced Bionics* factor, and *Becton Dickinson* Factors (a), (b),



and (d), because the Examiner only issued non-statutory double patenting (“OTDP”) rejections during prosecution and no Section 102/103 rejections, Petitioner’s asserted art and combinations were never expressly considered during prosecution, and Petitioner presents additional, non-cumulative disclosures, including Elman 2010, which were not before the Examiner. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (P.T.A.B. Feb. 13, 2020); *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8, 17 (P.T.A.B. Dec. 15, 2017); 35 U.S.C. § 325(d). Though an IDS lists Dixon and the Press Releases, the Examiner asserted only OTDP, and none of the art/combinations asserted herein. *Amgen Inc. v. Alexion Pharms., Inc.*, IPR2019-00739, Paper 15, 62 (Aug. 30, 2019).

On the second *Advanced Bionics* factor, and *Becton Dickinson* Factors (c), (e), and (f), the Examiner issued only OTDP rejections, and failed to make any rejections over the art herein, including the 2009 Press Release disclosing the claimed dosing regimen. As set out in Section VIII, the claims are both anticipated and obvious over the dosing regimens in the 2009 Press Release, 2010 Press Releases, and Dixon. The Examiner failed to apply the same (correct) logic in evaluating the claims in relation to the prior art, constituting material error.

**B. The *General Plastic* Factors Do Not Support Denial Under 35 U.S.C. § 314(a)**

*General Plastic* is indisputably limited to situations where “the same petitioner previously filed a petition directed to the same claims of the same patent.” *General Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, 2017 WL 3917706, at \*4 (P.T.A.B. Sept. 6, 2017). PO did not advance *General Plastic* arguments in the Samsung IPR; to the extent it does here, neither Biocon nor Mylan has previously filed a petition directed to the same claims as those in the Samsung IPR, a threshold issue for *General Plastic* analysis. Because the *same* party is not challenging the *same* patent and *same* claims, *General Plastic* factors 1-5 are inapplicable given there are not “second” or “multiple” petitions. *See id.* at \*4.

Further, absent “extenuating circumstances” such as a showing of petitioner coordination, once resolution of factor 1 indicates that Petitioner had not previously filed a petition against the same patent claims, factors 2-5 bear little relevance. *Qualcomm Inc. v. Monterey Rsch., LLC*, IPR202-01493, Paper 11, 15 (P.T.A.B. Mar. 8, 2021). There are no such extenuating circumstances here, as there was no coordination between Apotex and Petitioner as to the preparation of this or Apotex’s petition.

On factor 6, which considers the Board’s resources, *id.*, the Samsung IPR already has been granted institution and will proceed regardless of Petitioner’s participation, further weighing against denial.

**C. The *Fintiv* Factors Do Not Support Denial Under 35 U.S.C. § 314(a).**

At least because of the compelling merits of the challenges in the Samsung IPR, any discretionary denial argument based on *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 5-6 (P.T.A.B. Mar. 20, 2020), should be rejected.

On *Fintiv* Factors 1-3, it is undisputed that trial on *only* claims 6 and 25 of the '572 patent has concluded. However, PO held back all other claims of the '572 patent, including at least claims 7, 12-13, 15-24, and 29-30<sup>10</sup>, strategically electing not to litigate them at the June 2023 trial, but to reserve them for a possible second trial, along with at least 21 other asserted patents that were not addressed in the June 2023 trial. *See* Ex.1069, 2. PO has not represented that it would not try to assert all or a subset of the Challenged Claims in further litigation against Petitioner.

To date, PO has not pursued a schedule for follow-on litigation. Consequently, there is no trial date, and no district court schedule for the remaining Challenged Claims. Assuming typical scheduling (~30 months), a trial on the remaining Challenged Claims before a FWD in the Samsung IPR is highly unlikely. Ex.1065, 1. While some of the Challenged Claims were addressed in expert discovery, the

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<sup>10</sup> Following a finding of no patentable weight for the Results Limitations, PO stipulated to summary judgment on claims 1-5, 8-11, 14, and 26-28 in the Mylan Litigation, subject to “appellate rights.” Ex.1068, 1.

invalidity of at least Challenged Claims 7, 12-13, 15-24, and 29-30 was never fully developed at trial, and claims 15 and 24 were never fully addressed by the parties' experts. PO withdrew claim 24 before expert discovery and claim 15 before reply expert reports. PO has not dismissed with prejudice, nor offered a covenant not to sue, on those claims. Assertion of these claims will require investing resources during follow-on litigation. Accordingly, at least *Fintiv* Factors 1-3 weigh in Petitioner's favor.

On Factor 4, for avoidance of doubt, Petitioner stipulates that, to ensure no overlap for the claims-in-common, if the Board institutes and grants joinder, Petitioner will not pursue in district court litigation (unless a change in law otherwise permits) the specific grounds asserted in its copycat Petition, or that reasonably could have been asserted in Biocon's Petition, against the Challenged Claims; however, this stipulation does not apply to the extent that the Board denies institution for any reason. Given this stipulation, "the PTAB will not discretionarily deny institution." *See*, Katherine K. Vidal, Interim Procedure for Discretionary Denials, 7-8 (June 21, 2022) ("Vidal"); *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, 18-19 (P.T.A.B. Dec. 1, 2020) (precedential).

On Factor 5, it is undisputed that Petitioner and PO are parties to the Mylan Litigation.

On Factor 6, the institution of the Samsung IPR itself presents a compelling

merits case, including with the regard to at least Grounds I, IV, VI, VIII, and IX, and in view of the undisputed disclosures of the claimed drug, dose, disease, and interval in the prior art. *See generally* Ex.1066.

Beyond that, additional evidence of compelling merits comes from the unpatentability finding of claims encompassing the same 2Q8 regimen in the '338 patent. Ex.1011, 45. The '338 patent claims encompass the same subject matter as the Challenged Claims—use of the 2Q8 regimen in the treatment of angiogenic eye disorders, including DME and AMD. *Compare* Ex.1042, claim 1, *with* Ex.1001, claim 1. Thus, consistent with the Director's direction that the Board "will not rely on the *Fintiv* factors to discretionarily deny institution ... where a petition presents compelling evidence of unpatentability," Vidal, 2-3, discretionary denial arguments should be rejected.

## **X. CONCLUSION**

Petitioner has established a reasonable likelihood that claims 1-30 are unpatentable, and thus, Petitioner respectfully requests institution of the present Petition.

Dated: December 18, 2023

Respectfully Submitted,

RAKOCZY MOLINO MAZZOCHI SIWIK LLP

/Paul J. Molino/

Paul J. Molino

Registration No. 45,350

6 West Hubbard Street

Chicago, IL 60654

Telephone: (312) 222-6300

Facsimile: (312) 843-6260

paul@rmmslegal.com

*Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **Petition for *Inter Partes* Review of U.S. Patent No. 11,253,572 and Exhibits 1001-1070** were served on December 18, 2023, via FedEx Priority Overnight on the Patent Owner at the correspondence address of record for U.S. Patent No. 11,253,572 B2 as evidenced in Patent Center:

A&P - Regeneron (Prosecution)  
601 Massachusetts Ave., NW  
Washington, DC 20001-3743

/Paul J. Molino/  
\_\_\_\_\_  
Paul J. Molino (Reg. No. 45,350)

## **CERTIFICATE OF COMPLIANCE**

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that this Petition complies with the type-volume limitation of 37 C.F.R. § 42.24(a). The word count application of the word processing program used to prepare this Petition indicates that the Petition contains 13,877 words. This total does not include the tables of contents and authorities, mandatory notices, the caption page, table of exhibits, certificate of service, or this certificate of compliance. 37 C.F.R. § 42.24(a).

Dated: December 18, 2023

/Paul J. Molino/  
Paul J. Molino (Reg. No. 45,350)