

3
4 UNITED STATES PATENT AND TRADEMARK OFFICE
5 BOARD OF PATENT APPEALS AND INTERFERENCES
6

7
8 Patent Interference 105,626 McK
9 Technology Center 1600
10

11
12 IAN C. **ASHURST**, IGNATIUS LOY BRITTO,
13 CRAIG STEVEN HERMAN, LI LI-BOVET,
14 and MICHAEL THOMAS RIEBE,
15

16 Patent 6,546,928 B1,
17 Junior Party,
18

19 v.
20

21 FRANCOIS **BRUGGER** and ANGELIKA STAMPF,
22

23 Application 10/424,633,
24 Senior Party,
25

26
27 *Before: FRED E. McKELVEY, Senior Administrative Patent Judge, and*
28 *JAMESON LEE and SALLY C. MEDLEY, Administrative Patent Judges.*
29

30 *McKELVEY, Senior Administrative Patent Judge.*
31

32
33 **JUDGMENT**

34 Upon consideration of the record, including the DECISION ON
35 MOTIONS (Paper 3), it is

36 ORDERDED that judgment on priority as to Count B (the sole
37 count in the interference; Paper 4, pages 1-2) is awarded against Junior Party

1 IAN C. ASHURST, IGNATIUS LOY BRITTO, CRAIG STEVEN
2 HERMAN, LI LI-BOVET, and MICHAEL THOMAS RIEBE.

3 FURTHER ORDERED that Junior Party
4 IAN C. ASHURST, IGNATIUS LOY BRITTO, CRAIG STEVEN
5 HERMAN, LI LI-BOVET, and MICHAEL THOMAS RIEBE is not entitled
6 to a patent containing claims 1-27 (corresponding to Count B) of:

7 U.S. Patent 6,546,928 B1
8 granted 15 April 2003,
9 based on application 09/570,725
10 filed 15 May 2000.

11
12 35 U.S.C. § 102(g)(1).

13 FURTHER ORDERED that Junior Party
14 IAN C. ASHURST, IGNATIUS LOY BRITTO, CRAIG STEVEN
15 HERMAN, LI LI-BOVET, and MICHAEL THOMAS RIEBE is not entitled
16 to a patent containing claims 20-21 and 26-27 (corresponding to Count B)
17 of:

18 U.S. Patent 6,546,928 B1
19 granted 15 April 2003,
20 based on application 09/570,725
21 filed 15 May 2000.

22
23 See Interference 105,482, Paper 77, page 26 and *Guinn v. Kopf*, 96 F.3d
24 1419 (Fed. Cir. 1996).

25 FURTHER ORDERED that claims 1-27 of U.S. Patent
26 6,546,928 B1 are cancelled. 35 U.S.C. § 135(a).

27 FURTHER ORDERED that if there is a settlement agreement,
28 attention is directed to 35 U.S.C. § 135(c).

1 FURTHER ORDERED that a copy of this JUDGMENT shall
2 be placed in the files of (1) U.S. Patent 6,546,928 B1 and (2) application
3 10/424,633.

1 cc (via electronic mail):

2
3 Attorneys for Ashurst
4 (real party in interest
5 SmithKlein Beecham Corp.):

6
7 Gerald M. Murphy, Jr., Esq.
8 BIRCH, STEWART, KOLASH & BIRCH, LLP
9 8110 Gatehouse Road, Suite 100 East
10 Falls Church, VA 22042

11
12 Tel: 703-205-8000
13 Fax: 703-205-8050
14 Email: mailroom@bskb.com

15
16 Peter J. Armenio, Esq.
17 KIRKLAND & ELLIS LLP
18 153 East 53d Street
19 New York, NY 10022

20
21 Tel: 212-446-4960
22 Fax: 212-446-4900
23 Email: parmenio@kirkland.com

24
25 Attorney for Brugger
26 (real party in interest
27 Novartis Corporation):

28
29 James J. Kelly, Esq.
30 OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.
31 1940 Duke Street
32 Alexandria, VA 22314

33
34 Tel: 703-412-6485 (direct)
35 Fax: 703-413-2220
36 Email: jkelly@oblon.com

37
38 (continued on next page)

1 Gregory C. Houghton, Esq.
2 NOVARTIS CORPORATION
3 Corporate Intellectual Property
4 One Health Plaza, Building 430
5 East Hanover, NJ 07936-1080
6
7 Tel: 862-778-2614 (direct)
8 Fax: 973-781-8064
9 Email: gregory.houghton@novartis.com
10