

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS (ADROCA) LLC

PETITIONER

V.

ACORDA THERAPEUTICS, INC.

PATENT OWNER

CASE NO.: Not Yet Assigned

PATENT NO.: 8,440,703

FILED: November 18, 2011

ISSUED: May 14, 2013

INVENTORS: Andrew R. Blight, Ron Cohen

TITLE: METHODS OF USING SUSTAINED RELEASE AMINOPYRIDINE
COMPOSITIONS

DECLARATION OF SCOTT BENNETT

I, Scott Bennett, hereby declare as follows:

I. PROFESSIONAL BACKGROUND AND QUALIFICATIONS:

1. I make this declaration based on my personal knowledge, consideration of the materials I discuss herein, and my expert opinions.

2. I am a retired academic librarian working at 711 South Race Street, Urbana, IL, 61801-4132. I have over 27 years of research librarian experience.

3. From 1974-1981, I was employed as an Instructor, Assistant, and Associate Professor of Library Administration at the University of Illinois at Urbana-Champaign, Urbana, IL.

4. From 1981-1989, I was employed as the Assistant University Librarian for Collection Management at Northwestern University, Evanston, IL.

5. From 1989-1994, I was employed as the Director of The Milton S. Eisenhower Library at The Johns Hopkins University, Baltimore, MD.

6. From 1994-2001, I was employed as the University Librarian at Yale University, New Haven, CT.

7. I received an A.B. in English from Oberlin College (1960), a Ph.D. in English from Indiana University (1967), and an M.A. in Library Science from the University of Illinois (1976)

8. Additional details of my education and experience are set forth in my curriculum vitae, a copy of which is attached as Exhibit A.

II. SCOPE OF THIS REPORT

9. I have been asked to authenticate the following two documents, which have been represented to me by counsel as prior art, and establish their availability prior to the priority date of 8 April 2005, and prior to April 9, 2004 (the date of the Provisional Application for the U. S. Patent No. 8,440,703):

- a. Initial Public Offering, Acorda Therapeutics, Inc. Form S-1 Registration Statement under the Securities Act of 1933. Securities and Exchange Commission, Washington DC (hereinafter “Acorda S-1”); and,
- b. Hayes, Keith C., et al. (2003). Pharmacokinetic Studies of Single and Multiple Oral Doses of Fampridine-SR (Sustained-Release 4-Aminopyridine) in Patients with Chronic Spinal Cord Injury. *Clinical Neuropharmacology*, 26 (4: July-August), 185-192 (hereinafter “Hayes 2003”).

III. FEES:

10. My compensation for time spent working on this matter is based on an hourly rate of \$85 per hour. This compensation is not contingent on my opinions, my performance or the outcome of the *inter partes review*, or any issues in or related to this *inter partes review*.

IV. DOCUMENTS REPRESENTED AS PRIOR ART:

a. Acorda S-1 -

11. By law, companies in the United States making an initial public offer of stock must file certain forms with the U.S. Securities and Exchange Commission (SEC). Included in these disclosures is the S-1 form, which contains basic business and financial information about the issuer.

12. Since 1996, these public filings have been available online in the SEC's EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system. EDGAR is meant to increase "the efficiency and fairness of the securities market for the benefit of investors, corporations, and the economy *by accelerating the receipt, acceptance, dissemination, and analysis of time-sensitive corporate information* filed with the agency" (emphasis added; Attachment 1).

13. The document referenced as the Acorda S-1 is the S-1 filing of Acorda Therapeutics (Attachment 2). It is available as an HTML file from the EDGAR system (Attachment 3).¹

14. The SEC received the Acorda Therapeutics filing, including the S-1 form, on 26 September 2003. This is apparent from the header across the top of the

¹ Companies submitted documents to EDGAR primarily as .htm files. Companies may voluntarily submit PDF files, but the EDGAR system treats them as unofficial files.

document, which reads “As filed with the Securities and Exchange Commission on September 26, 2003. (Attachment 2.)

15. As the EDGAR Filing Details for the Acorda S-1 show, the SEC filed the document and its exhibits on EDGAR on 29 September 2003 (Attachment 3).² Therefore, the evidence from the SEC’s EDGAR system conclusively indicates that the Acorda S- 1 was available to researchers ordinarily skilled in the relevant art as of September 29, 2003, more than a year before the priority date of 8 April 2005, and months prior to April 9, 2004.

b. **Hayes 2003**

16. Hayes 2003 is a paper published in the July-August 2003 issue of *Clinical Neuropharmacology*. Attachment 4 is a copy of the table of contents of that journal issue obtained from the University of Chicago Library showing an entry for Hayes 2003.

17. Periodical titles, such as *Clinical Neuropharmacology*, would normally be cataloged by libraries years or decades before a given issue was added

² EDGAR is designed to provide prompt access to SEC filings. “In early 1993, the Commission began to mandate electronic filings through its Electronic Data Gathering, Analysis, and Retrieval system, EDGAR. This system is intended to benefit electronic filers, enhance the speed and efficiency of SEC processing, and make corporate and financial information available to investors, the financial community and others in a matter of minutes” (<http://www.sec.gov/info/edgar/regoverview.htm>). Filings are submitted via the Internet each business day. The importance of timely access to, as well as timely submission of, SEC filings is reflected in the fact that Acorda S-1 was filed in EDGAR only three dates after it was received at the SEC.

to the collection. When individual issues were received by a library, they would be checked in (often with a date stamp), added to library holdings records, and made available for use by readers as soon after their arrival as possible—normally within a few days or (at most) a few weeks.

18. Attachment 5 is a copy of Hayes 2003 from the University of Chicago Library's copy of the journal. Attachment 6 is a copy of the University of Chicago Library's catalog record for *Clinical Neuropharmacology*. Attachment 7 is a copy of OCLC's WorldCat record for this publication, showing that the journal is held by 359 libraries worldwide.

19. Attachment 8 is a copy of the cover of the July-August 2003 issue of *Clinical Neuropharmacology*, showing that it was processed by the University of Chicago Science Library on 25 August 2003.

20. One may reasonably and conservatively assume Hayes 2003 was available to readers at the University of Chicago by September 2003.

21. The Thomson Reuters online indexing service, the Web of Science, provided even wider bibliographic access to Hayes 2003. Attachment 9 is the index entry for Hayes 2003, showing that this entry was completed on 10 September 2003.

V. SUMMARY:

22. The evidence described above and supported by the attachments to this declaration conclusively indicates that Acorda S-1 and Hayes 2003 were available to diligent researchers ordinarily skilled in the relevant art substantially before April 9, 2004.

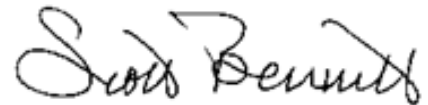
23. I reserve the right to supplement my opinion and/or this declaration in the future to respond to any arguments that the Patent Owner raises and to take into account new information as it becomes available.

VI. CERTIFICATION:

24. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on this 17th day of August, 2015.

Respectfully submitted,

A handwritten signature in black ink that reads "Scott Bennett". The signature is written in a cursive style with a large, prominent 'S' at the beginning.

Scott Bennett
Managing Partner
Prior Art Documentation Services LLC

ATTACHMENTS:

The following 9 attachments are true and accurate representations of online resources and library materials. Attachments 1-3 and 6-7 were prepared from online sources with Microsoft Snipping Tool software and incorporated into Word documents for ease of use in this Declaration. Attachments 4-5 and 8 are PDFs of library materials prepared by the University of Chicago Library. Attachment 9 is a PDF prepared from an online source. All the attachments were prepared between 22 July and 31 July 2015. All materials cited with URLs were available on 30 and 31 July 2015.

NO.	DESCRIPTION:
1	Description of the SEC EDGAR system
2	Acorda Form S-1 Registration from the EDGAR system (first page of 81, excluding addenda)
3	Acorda Therapeutics Filing Details on the EDGAR system
4	Contents pages of Clinical Neuropharmacology, 26 (4) from the University of Chicago Library
5	Hayes 2003 from the University of Chicago Library
6	University of Chicago Library catalog record for Clinical Neuropharmacology
7	OCLC WorldCat record for Clinical Neuropharmacology
8	Cover of Clinical Neuropharmacology, 26 (4) from the University of Chicago Library
9	Web of Science index entry for Hayes 2003