IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AstraZeneca AB SE-151 85, Södertälje SWEDEN, Plaintiff, v. HON. David J. Kappos Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office Office of the General Counsel United States Patent and Trademark Office P.O. Box 15667 Arlington, VA 22215 Madison Building East, Room 10B20 600 Dulany Street Alexandria, VA 22314 Defendant.	Civil Action No.

COMPLAINT

Plaintiff AstraZeneca AB, by its attorneys, for its Complaint against the Honorable David J. Kappos, states as follows:

NATURE OF THE ACTION

1. This is an action to remedy the decision and judgment of the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office, as provided for by 35 U.S.C. § 145. The proceedings relevant to this action are for U.S. Patent Application Serial No. 10/240,656, filed April 4, 2003, in the name of Beat Thurlimann entitled "Use of Fulvestrant in the Treatment of Resistant Breast Cancer" and owned by Plaintiff AstraZeneca AB by assignment ("the '656 application").

THE PARTIES

2. Plaintiff AstraZeneca AB is a corporation organized and operating under the laws of Sweden, having a principal place of business at SE-151 85, Södertälje, Sweden.

3. Defendant Hon. David J. Kappos is the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office ("PTO"), acting in his official capacity.

JURISDICTION AND VENUE

4. Jurisdiction is based on 35 U.S.C. § 145 and 28 U.S.C. § 1338(a). Venue is proper in this judicial district under 35 U.S.C. § 145.

FACTS GIVING RISE TO THE COMPLAINT

5. Plaintiff AstraZeneca AB is the owner by assignment of all right, title and interest in the '656 application, as evidenced by the assignment documents recorded in the PTO at Reel 014055, Frame 0360, and is the real party in interest in this case.

6. The claims of the '656 application relate to the use of fulvestrant in the treatment of breast cancer in patients who have previously failed treatments with both a selective estrogen receptor modulator and an aromatase inhibitor. Prosecution of the '656 application on the merits before the PTO Examiner ended with a final rejection mailed September 14, 2007. Plaintiffs filed a Request for Continued Examination, an affidavit and a response on March 13, 2008. After receiving a non-final rejection on April 29, 2008, Plaintiffs made a timely appeal to the PTO Board of Patent Appeals and Interferences ("Board").

7. The Board affirmed the final rejection of all pending claims of the '656 application in a decision dated August 2, 2010.

8. Plaintiff AstraZeneca AB is dissatisfied with the Board's decision and is filing

this civil action to remedy the decision. The Board's decision misapplied the law of obviousness and failed to properly consider Plaintiff's evidence establishing the non-obviousness of the pending claims. The Board's decision is erroneous, contrary to law, and should be reversed.

9. Plaintiff AstraZeneca AB has not appealed the Board's decision to the U.S. Court of Appeals for the Federal Circuit.

10. This Complaint is being filed within two months of the Board's decision.

PRAYER FOR RELIEF

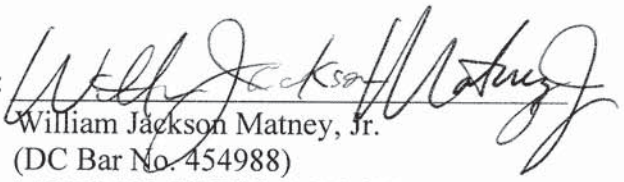
WHEREFORE, Plaintiff AstraZeneca AB demands judgment against Defendant and respectfully requests that this Court enter Orders:

A. Reversing the August 2, 2010 decision of the Board;

B. Adjudging that Plaintiff AstraZeneca AB is entitled to receive a patent for the invention claimed in the '656 application and authorizing the Director to issue such patent on compliance with the requirements of law; and

C. For such other relief as the Court deems proper.

Dated: October 1, 2010

By: 
William Jackson Matney, Jr.
(DC Bar No. 454988)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: 202.739.3000
Facsimile: 202.739.3001

Attorneys for Plaintiff AstraZeneca AB

Of Counsel:

Donald J. Bird (135897)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: 202.739.3000
Facsimile: 202.739.3001