

VIVUS European Qsymia Patent: Third Party Challenge Filed

Robert Diggs Deeper: Was the Combination of Topiramate and Phentermine Really New When Vivus' Qsymia Patent Was First Filed?

SAN FRANCISCO, USA, August 11, 2013 /EINPresswire.com/ -- Today a prior art challenge against one of Vivus' pending patent applications in Europe

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Why should Vivus get a patent to Qsymia when Dr. McElroy filed a patent on the same drug combination for weight loss nearly four months before Vivus' inventor filed his patent?

Robert F. Diggs

(European Patent Application No: 07011472.3) can now be viewed directly by the public on the European Patent Register by opening the document entitled – “[Observations by third parties](#).” Earlier this week Robert Diggs filed this challenge against one of Vivus' pending patent applications in Europe that covers its approved drug, Qsymia® (fixed dose combinations of topiramate with phentermine). For a complete review of Vivus' patent position on Qsymia, including the details of the European patent challenge, please view the [full report here](#).

At the heart of the third party observation and challenge to Vivus' patent position is a competing patent application filed by Dr. Susan McElroy of the University of Cincinnati (see International patent application PCT/US00/04187). The McElroy patent describes the administration of combinations of topiramate with other drugs including phentermine to cause weight loss in humans, the same combination of drugs and indication as those of the FDA-approved Vivus drug Qsymia. However, the McElroy patent was filed in February 24, 1999, nearly four months before the earliest filing of Vivus' patent to the Qsymia combination, which was first filed on June 14, 1999.

“I filed a third party observation against Vivus' pending patent application this week to challenge Vivus' management to explain why Vivus deserves a patent to a pharmaceutical combination that was previously described by the University of Cincinnati in a patent filed nearly four months prior to the earliest filing of the Vivus patent,” stated Robert Diggs. “The European Patent Office has now, and had at the time, a first-to-file system that awards patent rights to the first application filed on any particular invention.”

The implications of the McElroy patent disclosure for Vivus' US Qsymia patents are less clear. In 1999, the US Patent & Trademark Office had a first to invent system that is still in place for patents first filed in 1999. It is possible that Vivus' could show that their inventor had the idea and working examples of the Qsymia combination (topiramate and phentermine) prior to the first filing of the McElroy patent. To date, Vivus has never made such a showing public.

It is important to realize that the Qsymia patents at issue protect an asset that is responsible for a vast majority of Vivus' current \$1.36 billion market cap. Without this asset it is not clear that Vivus would be a going concern.

RFD IP Business Services ("RFD") provides intellectual property-related business diligence services for the pharmaceutical and biotech industries.

RFD's earliest report on Vivus IP from July 19, 2012 was first excerpted and promoted by Citron research. One day later, RFD published its full report, which can be [viewed here](#). On July 19, 2012 Vivus shares opened at \$29.12 and fell to a relative low of \$21.70 before closing at \$24.15 on July 20, 2012.

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