

VIVUS Qsymia Patents: Appearance of Ongoing and Systematic Inequitable Conduct before the USPTO

Robert Diggs Deeper: What Is the Role of Current Vivus Patent Counsel Mintz Levin?

SAN FRANCISCO, USA, August 12, 2013 /EINPresswire.com/ -- Earlier today RFD IP Business Services ("RFD") released [a new report](#) analyzing the likely inequitable conduct challenges to VIVUS, Inc. and the patents that protect its approved drug, Qsymia(R) (fixed dose combinations of phentermine and topiramate). For a complete review of Vivus' patent position on Qsymia, including the details of the European patent challenge, please view the [full report here](#).



Mintz Levin is a law firm with an excellent reputation for sophisticated intellectual property work. It surprises me that their firm would be involved in anything that appears ethically compromised."

Robert F. Diggs

What is new in the Inequitable Conduct Report?

The report exposes the tension between, on the one hand, admissions by Vivus attorneys at Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo PC ("Mintz Levin") that the company's earliest Qsymia patents do not teach how to use low doses

of topiramate (15 to 50 mg), while simultaneously trying to obtain claims from these early patents that cover doses of topiramate from 5 to 1000 mg.

The report also provides overall context for the duties of disclosure, candor, and good faith to the USPTO, and how failing these duties constitutes inequitable conduct that can result in patents being held unenforceable. The report further summarizes earlier misstatements about the prior art and contradictory statements about whether the combination of phentermine and topiramate effectively eliminates the side effects that would otherwise result from each drug used separately. While the Mintz Levin attorneys were not prosecuting Vivus' Qsymia patents when the earlier misstatements about the prior art or the most problematic statements regarding side effects were made, they have done nothing to correct the record or clear the air.

About RFD IP Business Services

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

referenced with links to original source materials.

RFD's earliest report on Vivus IP from July 19, 2012 was 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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