

United States Court of Appeals for the Federal Circuit

00-1467

ELAN PHARMACEUTICALS, INC.
and ATHENA NEUROSCIENCES, INC.,

Plaintiffs-Appellants,

v.

MAYO FOUNDATION FOR MEDICAL EDUCATION AND RESEARCH,

Defendant-Appellee.

Lynn H. Pasahow, Fenwick & West LLP, of Palo Alto, California, filed a response to the petition for rehearing for plaintiffs-appellants. Of counsel on the response were Beth H. Parker, and S. Christian Platt, Bingham McCutchen, LLP, of San Francisco, California.

Robert E. Hillman, Fish & Richardson, P.C., of Boston, Massachusetts, filed a combined petition for panel rehearing and rehearing en banc for defendant-appellee. Of counsel on the petition were Shelley K. Wessels, Karen I. Boyd, and Kurtis D. MacFerrin, Fish & Richardson, P.C., of Redwood City, California. Also of counsel was Chad A. Hanson, Fish & Richardson, P.C., of Minneapolis, Minnesota.

Appealed from: United States District Court for the Northern District of
California

Judge William H. Alsup

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ON COMBINED PETITION FOR PANEL REHEARING
AND REHEARING EN BANC

ORDER

A combined petition for panel rehearing and rehearing en banc having been filed by the Appellee, a response thereto having been invited by the court and filed by the Appellants, the petition for panel rehearing having been referred to the panel that heard the appeal, thereafter the petition for rehearing en banc and response having been referred to the circuit judges who are in regular active service, and a poll having been requested and taken,

IT IS ORDERED THAT:

- (1) The petition for panel rehearing is denied.
- (2) The petition for rehearing en banc is granted.
- (3) Acting en banc, the court vacates the panel's judgment and original opinion entered August 30, 2002, Elan Pharmaceuticals, Inc. v. Mayo Foundation, 304 F.3d 1221 (Fed. Cir. 2002).

FOR THE COURT

December 18, 2002

Jan Horbaly

Date

Jan Horbaly

Clerk

cc: Lynn H. Pasahow, Esq.
Robert E. Hillman, Esq.