

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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METRICS, INC.  
Petitioner

v.

SENJU PHARMACEUTICAL CO., LTD.  
Patent Owner

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U.S. Patent No. 8,129,431 to Sawa *et al.*  
Issue Date: March 6, 2012  
Title: Aqueous Liquid Preparation Containing 2-Amino-3-(4-bromobenzoyl)  
Phenylacetic Acid

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*Inter Partes* Review Nos.: IPR2014-01041

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**PETITIONER'S OPPOSITION BRIEF  
ADDRESSING REAL PARTY-IN-INTEREST ISSUES RAISED IN  
PATENT OWNER'S PRELIMINARY RESPONSE**

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## I. RELIEF REQUESTED

Pursuant to the Board’s e-mail of January 16, 2015, Petitioner Metrics, Inc. (“Metrics”) submits this Opposition Brief addressing the real party-in-interest (“RPI”) issues raised in Patent Owner’s Preliminary Responses (Paper 13, “Preliminary Response”).<sup>1</sup> Patent Owner requests that the Board revoke the filing dates for Metrics’ Petitions for failure to comply with 35 U.S.C. § 312(a)(2), because “Metrics failed to identify Coastal as a real-party-in-interest.” (Paper 13 at 2).<sup>2</sup> This request has no merit because it is premised on the fiction that Metrics and Coastal are two separate legal entities. As the record plainly shows, “Coastal Pharmaceuticals” is solely a business name for Metrics—nothing more—and therefore does not need to be identified as a RPI.

Accordingly, and for the reasons set forth below, the Board should reject Patent Owner’s request and grant institution of trial on the merits.

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<sup>1</sup> Patent Owner raised identical RPI issues in each of IPR Nos. 2014-01041 and -01043. In this Opposition Brief, Petitioner will refer to the record in IPR 2014-01041, with the understanding that a corresponding reference appears in IPR 2014-01043. This Opposition is accompanied by four additional exhibits (EX1054 – EX1057), for which an updated Exhibit List will be separately filed.

<sup>2</sup> Other than the status of Coastal as a RPI, there are no material facts in dispute.

## II. DISCUSSION

Whether a party who is not a named participant in a given proceeding nonetheless constitutes a RPI to that proceeding is “a highly fact-dependent question.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012). The USPTO will apply traditional common-law principles and may consider certain factors, such as control over a party’s participation in a proceeding, when determining whether a party is a RPI. *Id.*

The law is clear and consistent across many jurisdictions that a corporate entity using a business name, or a d/b/a (“doing business as”) name, does not create a legal entity in the name separate from the underlying corporate entity. For this reason, a business name or d/b/a, named as a separate party in litigation in addition to its underlying corporate entity, is routinely dismissed because the d/b/a name is not a separate legal entity from its underlying corporate entity. It follows, then, that a business name cannot be a RPI separate from its corporate entity.

Indeed, as a registered business name for Metrics, Coastal Pharmaceuticals<sup>3</sup> (“Coastal”) could not, as Patent Owner contends, provide prior art to Metrics, or

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<sup>3</sup> “Coastal Pharmaceuticals” and “Coastal Pharmaceuticals, Inc.” are both sometimes used as business names for Metrics. Neither is a separate legal entity from Metrics and together they are referred to herein as “Coastal.”

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