

Filed on behalf of: Senju Pharmaceuticals Ltd., Co.

By: M. Andrew Holtman, Ph.D.
Jonathan R.K. Stroud
Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
901 New York Avenue, NW
Washington, DC 20001-4413
Telephone: 202-408-4000
Facsimile: 202-408-4400
E-mail: andy.holtman@finnegan.com
jonathan.stroud@finnegan.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

METRICS, INC., MAYNE PHARMA, and
JOHNSON MATTHEY, INC.

Petitioner

v.

SENJU PHARMACEUTICAL CO., LTD., BAUSCH & LOMB, INC., and
BAUSCH & LOMB PHARMA HOLDINGS CORP.

Patent Owner

Case IPR2014-01041

Patent 8,129,431

**Patent Owner's Reply Brief
to Petitioner's Opposition Brief Addressing
Real Party-in-Interest Issues Raised in Patent Owner's Preliminary Response**

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Introduction

“Where a party files an incomplete petition, no filing date will be accorded, and the Office will dismiss the petition if the deficiency in the petition is not corrected within one month” 37 C.F.R. § 42.106(b); *see Paramount Home Entm't Inc. v. Nissim Corp.*, IPR2014-00961, at 8 (Dec. 29, 2014) (denying petition for failing to name real party in interest (“RPI”). Metrics filed an incomplete petition by failing to name an RPI, Coastal, and its petition should be likewise dismissed under 35 U.S.C. § 312(a)(2).

The test for an RPI is not driven by corporate labels. It is a factual inquiry into a party's actions. Coastal, the disputed entity, is said to be a corporate “d/b/a,” and thus, according to Metrics, not a real party in interest.¹ Coastal, however, committed most of the salient acts. It filed the Abbreviated New Drug Application (“ANDA”) with the U.S. Food and Drug Administration (“FDA”) seeking to copy a patented drug. Coastal likewise filed a Paragraph IV Certification, a statutory act of patent

¹ Board petitions frequently disclose d/b/a entities as real parties-in-interest. *See, e.g., Wavemarket Inc. d/b/a Location Labs v. LocationNet Sys. Ltd.*, IPR2014-00199, Paper 24, at 1 (June 11, 2014) (“Wavemarket, Inc. d/b/a Location Labs (collectively ‘Petitioner’)”); *see also Conopco, Inc. d/b/a Unilever v. Procter & Gamble Co.*, IPR2013-00505, IPR2013-00509 (Aug. 14, 2013) (informative); *Nat'l Envtl. Prods. Ltd. & N.E.P., Inc., d/b/a Neptronic v. Dri-Steem Corp.*, IPR2014-01503 (Sept. 9, 2014).

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