

Paper No. _____
Filed: July 1, 2015

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 No. 8,129,431

**JOINT REQUEST THAT SETTLEMENT AGREEMENT BE TREATED
AS BUSINESS CONFIDENTIAL INFORMATION AND KEPT
SEPARATE UNDER 37 C.F.R § 42.74(c)**

INTRODUCTION

Petitioner Metrics, Inc., Mayne Pharma, and Johnson Matthey, Inc. (collectively, “Metrics”), and Patent Owner Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp. (collectively, “Senju”) have entered into a settlement agreement that resolves all underlying disputes between the parties, including the *inter partes* review proceeding IPR2014-01041, against U.S. Patent No. 8,129,431, currently before the Board (“the proceeding”).

In an email sent to parties on June 30, 2015, in light of the settlement agreement, the Board authorized the parties to file a joint motion to terminate in the above-captioned proceeding. Also in the email, the Board authorized the parties to file a joint request that the Office treat the agreement as business confidential information. Accordingly, the parties jointly request that the agreement be held separately and treated as business confidential information pursuant to 37 C.F.R. § 42.74(c).

RELIEF REQUESTED

If requested, the rules permit the parties to have any filed settlement agreement treated as business confidential information, and kept separate from the files of the involved patent. 37 C.F.R. § 42.74(c). Indeed, the statute requires it.

At the request of a party to the proceeding, the agreement or understanding shall be treated as business confidential information, shall be kept separate from the file of the involved patents, and shall be made available only to Federal Government agencies on written request, or to any person on a showing of good cause.

35 U.S.C. § 317(b).

In a motion filed concurrently herewith, Petitioner and Patent Owner jointly request termination of the proceeding. The parties also submit, as part of that joint request, a true copy of the Agreement between them (Exhibit 2027). Because the Agreement contains confidential business information, the parties jointly request that the Office treat the Agreement (Exhibit 2027) as business confidential information, that the Agreement be kept separate from the file of the involved patents, and the Agreement be made available only to Federal Government agencies on written request, or to other persons only on a showing of good cause.

CONCLUSION

For the foregoing reasons, the Petitioner Metrics and the Patent Owner Senju jointly and respectfully request that the Board hold the Agreement as business confidential information pursuant to 37 C.F.R. § 42.74(c) in the proceeding.

Respectfully submitted,

 # 42,385

Date: July 1, 2015

Patrick D. McPherson
Registration No. 46,255
Duane Morris LLP
505 9th Street, Suite 1000
Washington, DC 2004

Vincent L. Capuano
Registration No. 42,385
100 High Street, Suite 2400
Boston, MA 02110

*Attorneys for Petitioner
Metrics, Inc., Mayne Pharma, and
Johnson Matthey, Inc.*

Date: July 1, 2015

/Bryan C. Diner/
Bryan C. Diner, Lead Counsel
Reg. No. 32,409
M. Andrew Holtman, Back-up Counsel
Reg. No. 53,032
Justin J. Hasford, Back-up Counsel
Reg. No. 62,180
Joshua L. Goldberg, Back-up Counsel
Reg. No. 59,369
Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
901 New York Ave. NW
Washington, DC

*Attorneys for Patent Owner
Senju Pharmaceutical Co., Ltd., Bausch
& Lomb, Inc., and Bausch & Lomb
Pharma Holdings Corp.*

CERTIFICATE OF SERVICE

The undersigned certifies a copy of the foregoing **JOINT REQUEST TO FILE AS CONFIDENTIAL BUSINESS INFORMATION** was served on July 1, 2015 via electronic mail directed to the counsel of record for the Petitioner at the following:

Patrick D. McPherson
PDMcPherson@duanemorris.com

Vincent L. Capuano
VCapuano@duanemorris.com

Dated: July 1, 2015

/Ashley F. Cheung/
Ashley F. Cheung
Case Manager

FINNEGAN, HENDERSON,
FARABOW, GARRETT &
DUNNER LLP