

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

METRICS, INC.
Petitioner

v.

SENJU PHARMACEUTICAL CO., LTD.
Patent Owner

U.S. Patent No. 8,669,290 to Sawa *et al.*
Issue Date: March 11, 2014
Title: Aqueous Liquid Preparation Containing 2-Amino-3-(4-bromobenzoyl)
Phenylacetic Acid

Inter Partes Review No.: IPR2014-01043

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

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TABLE OF CONTENTS

	Page
I. RELIEF REQUESTED	1
II. DISCUSSION	2
A. Coastal is an Assumed Name of Petitioner Metrics and Not a Separate Legal Entity	5
B. The Legal Authority Does Not Treat a Business Name as a Separate Legal Entity that Would Require Listing Coastal as a RPI	7
III. CONCLUSION	10

TABLE OF AUTHORITIES

CASES

<i>La Familia v. The Inspiration Networks</i> , No. 13 CVS 1079, 2014 WL 5342583 (N.C. Super. October 20, 2014).....	9
<i>Pinkerton's, Inc. v. Superior Court</i> , 57 Cal. Rptr 2d 356 (Cal. Ct. of Appeal 1996)	8-9
<i>Snowden v. Checkpoint Check Cashing</i> , 290 F.3d 631 (4th Cir. 2002).....	8-9

PATENT AND TRADEMARK OFFICE CASES

<i>In re Guan</i> , No. 95/001,045, Decision Vacating Filing Date (P.T.A.B. Aug. 25, 2008).....	9-10
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FEDERAL STATUTES

35 U.S.C. § 312(a)(2)	1,3
35 U.S.C. § 312(e)	2

REGULATIONS

Patent Office Trial Practice Guide, 77 Fed. Reg. 48756 (Aug. 14, 2012).....	2-3
37 C.F.R. §42.1(b).....	4

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”).¹ 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).² 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.

¹ 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.

² 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 Pharmaceuticals³ (“Coastal”) could not, as Patent Owner contends, provide prior art to Metrics, or

³ “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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