IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SENJU PHARMACEUTICAL CO., LTD., BAUSCH & LOMB, INC., and BAUSCH & LOMB PHARMA HOLDINGS CORP.,	)	
Plaintiffs,	)	
	)	Civil Action No.: 1:14-cv-03962-JBS-KMW
v.	)	
METRICS, INC., COASTAL PHARMACEUTICALS, INC., MAYNE PHARMA GROUP LIMITED, and MAYNE PHARMA (USA), INC.,	)	**Motion Date: October 3, 2014**
Defendants.	)	

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF ITS MOTION FOR ORDER ENJOINING DEFENDANTS FROM PROSECUTING PARALLEL *INTER PARTES* REVIEW PROCEEDINGS (D.I. 32)

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I. INTRODUCTION

The relief Plaintiffs request is justified either (a) by construing § 315(a)(1) of the IPR provisions, in accordance with its manifest intent, as **barring** resort to IPR by a party that has provoked Hatch-Waxman Act litigation by challenging validity in an ANDA containing a Paragraph IV Certification or (b) by **enjoining** prosecution of the later-filed IPR raising the same issues under the All Writs Act. Both approaches effectuate the manifest intent behind the bar against resort to IPR where a patent challenger has already provoked district court litigation, harmonize the IPR provisions of the AIA with the dispute-resolution procedures of the Hatch-Waxman Act, protect the power of this Court to resolve this dispute, avoid duplication of effort, avoid the risk of inconsistent judgments, avoid serious Constitutional questions regarding use of IPR proceedings in cases like this, and redress a growing misuse of IPR proceedings by threatening to file IPRs in order to extract economic concessions from patent owners.

The thrust of Defendants' opposition is that the AIA as a whole was enacted in full view of the Hatch-Waxman Act, whereby the statutory language should be literally construed to say that what Defendants are trying to do must be legal. But the courts have already found that literal application of some of the IPR provisions would be violative of equally visible legal precedent. *See*, *e.g.*, *Consumer Watchdog v. Wisconsin Alumni Research Foundation*, 753 F.3d 1258 (Fed. Cir. 2014) (statutory provisions allowing appeal by *inter partes* reexamination petitioner inapplicable where petitioner lacks any real case or controversy). And just because something is technically legal does not make it right. All applications of the first-to-file rule involve second-filed actions that the second-filer technically had a legal right to file, but the injunction nonetheless lies to protect the jurisdiction of, and avoid interference with proceedings in, the court where the first action was filed.

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