

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AGILA SPECIALTIES INC. and  
MYLAN PHARMACEUTICALS INC.,  
Petitioner,

v.

CUBIST PHARMACEUTICALS, INC.,  
Patent Owner.

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Case IPR2015-00144  
Patent 8,058,238 B2

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Before BRIAN P. MURPHY, JON B. TORNQUIST, and  
TINA E. HULSE, *Administrative Patent Judges*.

TORNQUIST, *Administrative Patent Judge*.

ORDER

Authorizing Motion to Accord New Filing Date  
*37 C.F.R. § 42.20 and 42.22(d)*

On November 21, 2014, a telephonic conference call was conducted between Judges Tornquist and Hulse and counsel for Petitioner and Patent Owner. During the conference call, Petitioner requested authorization to file a motion to modify the accorded filing date for IPR2015-00144 from October 24, 2014 to October 23, 2014. According to Petitioner, certain technical difficulties prevented the electronic filing of one or more documents in IPR2015-00144 on October 23, 2014. Petitioner further contends that the petition and accompanying exhibits were also timely filed by Express Mail on October 23, 2014. *See, e.g.*, 37 C.F.R. § 6(b)(2)(i). Based on the technical difficulties encountered during electronic filing, and the filing of the petition by Express Mail on October 23, 2014, Petitioner contends that the petition should be accorded an October 23, 2014 filing date.

On the conference call, we authorized Petitioner to file, on or before December 1, 2014, a motion to accord a new filing date to IPR2015-00144, which is not to exceed 10 pages in length. We authorized Patent Owner to file an opposition to the motion, if any, on or before December 8, 2014, also not to exceed 10 pages in length. No reply was authorized.

Counsel for Petitioner was instructed to set forth in the motion: (1) the circumstances surrounding the electronic filing of IPR2014-00144, including any evidence of technical problems with the Board's website or the Patent Review Processing System (PRPS); (2) the steps taken by Petitioner before and after any technical problems arose to ensure timely filing of the petition and exhibits; (3) the justification for the Board to accept paper filing of the petition and exhibits; and (4) the authority of the Board, if any, to waive the

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statutorily mandated one year time limitation for filing the present IPR, to the extent such time limitation applies. *See* 35 U.S.C. § 315(b).

Based on the foregoing, it is hereby:

ORDERED that Petitioner is authorized to file a motion to accord a new filing date to IPR2015-00144;

FURTHER ORDERED that the motion is not to exceed 10 pages in length and is to be filed on or before December 1, 2014;

FURTHER ORDERED that Patent Owner is authorized to file an opposition to the motion to accord a new filing date for IPR2015-00144;

FURTHER ORDERED that any opposition is not to exceed 10 pages in length and is to be filed on or before December 8, 2014; and

FURTHER ORDERED that no reply is authorized.

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PETITIONER:

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