

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AGILA SPECIALTIES INC. AND
MYLAN PHARMACEUTICALS INC.,
Petitioners,

v.

CUBIST PHARMACEUTICALS, INC.,
Patent Owner

Patent No. 8,058,238

Case IPR20150-00144

**DECLARATION OF ADRIANA SERRANO IN SUPPORT OF AGILA'S
MOTION TO CORRECT ACCORDED FILING DATE
UNDER 37 C.F.R. §§1.10, 42.20 and 42.22**

I, Adriana Serrano, declare as follows:

1. I am a paralegal associated with the law firm of Wilson Sonsini Goodrich & Rosati (“WSGR”), counsel for Petitioner Agila Specialties Inc. and Mylan Pharmaceuticals Inc. (“Agila”) in this case. I submit this declaration in support of Petitioners’ Motion to Correct the Accorded Filing Date of *Inter Partes* Review Petition IPR2015-00144, challenging claims 10-36, 43-47 and 176-192 of U.S. Patent No. 8,058,238, and I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts.

2. I received my Bachelors in Arts (Philosophy) from Mount Saint Mary’s College in June 2000. I received my paralegal certificate from Cerritos Community College in Los Angeles County in December 2012.

3. I have been employed by WSGR since December 2011, and a paralegal at WSGR since December 2013. I was a Practice Group Assistant with the Litigation and Patent Groups since December 2011, before becoming a paralegal in the Patent Group, assisting attorneys and patent agents with the electronic filing of documents, responses and applications on the U.S. Patent and Trademark Office’s EFS Web system. Prior to joining WSGR in December 2011, I worked as a Litigation Assistant for numerous law firms in San Diego and Los Angeles County for approximately 11 years, with a total of 13 years of experience in the legal field, specifically in litigation and patent prosecution.

4. My work as a paralegal includes electronic filing and support of the *Inter Partes* Review team. This includes electronically filing *inter partes* review documents with the Patent Trial and Appeal Board's Patent Review Processing System (PRPS) electronic filing website. I have been electronically filing documents with PRPS since December 2012.

5. In preparation for the filing of *inter partes* review petitions for U.S. Patent Nos. 8,058,238 ('238 patent) and 8,129,342 ('342 patent), I prepared and marked all prior art references and court documents as exhibits cited in the petition and declarations for electronic filing and personal service by October 22, 2014. I also made copies of the prior art and court document exhibits by October 22, 2014, in preparation for personal service of the documents to patent owner Cubist Pharmaceuticals, Inc. ("Cubist").

6. On October 23, 2014, I was working to assemble and serve paper copies on Cubist of the *inter partes* review petitions for the '238 and '342 patents, and electronically file Petitioners' Request for *Inter Partes* Review of U.S. Patent No. 8,058,238, which was covered in four petitions to address the large number of claims (192 claims total) for the '238 patent. The fourth and last petition challenged claims 10-36, 43-47 and 176-192 of the '238 patent.

7. I began uploading the petition and exhibits for the last petition for the '238 patent (IPR2015-00144) at 8:26 pm. Because Attorney Lorelei Westin was on

my computer uploading the third petition for the '238 patent (IPR2015-00143), Ms. Westin instructed me to use her computer. I was able to input all of the information for the lead and back-up counsel, as well as the information for the Real Parties in Interest and powers of attorney from Petitioners Agila and Mylan Pharmaceuticals. I then began to upload the fourth *Inter Partes* Review Petition for U.S. Patent No. 8,058,238.

8. Once the petition was uploaded, I pressed on the “save” button to save my work. However, when I attempted to upload the first of the exhibits that accompanied the petition I was unable to do so. Instead, a small blue circle appeared on the screen, and the upload appeared to be pending. I waited for awhile and realized that the uploading transaction was not progressing, and was also not responsive to my attempts to further the uploading process. This included pressing on the “Next” button in the lower right hand corner of the screen, as well as the “Back” button in the lower left hand corner of the screen. The program was unresponsive to anything that I clicked on. I had no other choice but to try and refresh the screen, which subsequently closed the browser window. I was then left with the only choice of re-logging in to PRPS and starting the process from the point of my previous save of the file.

9. Once I was able to get back to the saved petition and upload more documents, I immediately encountered the same glitches, which occurred with at

least two other exhibits. Because of the issues with the PRPS electronic filing system, and the deadline of 8:59 pm Pacific Time that we were facing for filing, I immediately turned to payment of the Petition Fee, which the PRPS system calculated at \$42,400.00. This was approximately 8:56 pm. I inputted all of the deposit account information, the filing fees, the authorized user information (“Peter Munson” as lead counsel) and the password, and hit the “pay” button. I then hit the “submit” button to submit the petition and waited for a few seconds, but the system appeared non-responsive as previously. I hit the submit button once again, before 8:59 pm. I am positive that as I was waiting for confirmation from PRPS after pressing the submit button the second time, it was 8:59 pm. After a few seconds, I received notification from PRPS that the filing date accorded was October 24, 2014.

10. I was certain that I was diligent in paying and submitting the petition before 8:59 pm. I spoke to Lorelei Westin and Peter Munson of WSGR, and explained the technical glitches that I had while uploading the documents, as well as the delay in receiving the filing date by the PRPS system after I pressed the submit button. It was decided then that we would do a paper filing of a complete set of the petition and exhibits to the Patent Trial and Appeal Board by Priority Express Mail.

11. While Ms. Westin prepared the accompanying motion and revised the petition to authorize payment of the petition fee by the Patent Trial and Appeal Board, I prepared a file-transfer protocol link to send to our document processing

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