

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 IPR2015-00144

MOTION TO CORRECT ACCORDED FILING DATE
Under 37 C.F.R. §§ 1.10, 42.20 and 42.22

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MISCELLANEOUS

77 Fed. Reg. 48756, 48755
 77 Fed. Reg. 48756, 4876210

I. Statement and Summary of Reasons for Relief Requested

Petitioner (“Agila”) files this motion to correct the accorded filing date as it timely filed and served its petition on October 23, 2014 with the requisite supporting documents and appropriate fee. When faced with an electronic filing difficulty for the last of seven contemporaneously filed petitions, Agila diligently and timely pursued the alternative filing mechanism provided in the rules.

Accepting the paper filing resulting from Agila’s prompt remedial action with the electronic filing creates no legally cognizable prejudice for the Patent Owner (“Cubist”) or for the Board. Conversely, if the Board refuses to accept Agila’s timely filed petition, the prejudice to Agila and to the public would be significant.

II. Brief Summary of Factual Background

On October 23, 2014, Agila filed seven petitions for the *inter partes* review (IPR) of four Cubist patents. Four of these petitions relate to U.S. Patent No. 8,058,238 patent (‘238 patent), which boasts 192 overlapping and substantially similar claims. The petition that is the subject of this motion (IPR2015-00144; ‘144 petition) requested review of certain claims of the ‘238 patent, many of which are similar to those in its three sister petitions. In fact, the declarations and exhibits of the ‘144 petition are *identical* to those of IPR petitions IPR2015-00141, -00142 and -00143 for the ‘238 patent, which were filed electronically with the Board on October 23, 2014, and timely served on Cubist, along with IPR2015-00144.

As detailed below, Agila began electronic filing of the '144 petition on October 23, 2014 on a separate computer, but encountered difficulties uploading documents and using the PRPS system. Agila filed the same '144 petition later that same evening by mail with a motion under §42.6(b)(2). The petition and exhibits were timely served on Cubist. The Board thus received two copies of the '144 petition: the electronic copy, which the Board first granted a filing date of October 23, 2014 via notice, subsequently expunged that notice without reason or hearing and replaced with a notice granting an October 24, 2014 filing date; and the paper copy, for which the Board has not issued a notice according a filing date.

III. Statement of the Reasons for the Relief Requested

A. The Petition Was Timely Filed

(i) The Petition Met the Statutory Requirements

The six statutory requirements for an IPR petition are for the petitioner to: 1) pay a fee; 2) identify real parties-in-interest; 3) identify the grounds for challenging each claim; 4) provide evidence supporting the grounds; 5) provide such other information required by the rules; and 6) serve the petition and evidence on the patent owner. 35 U.S.C. §312(a). Significantly, no mode of filing or service to the Patent Owner or the Board is specified in the statute. With every statutory requirement met on October 23, 2014, this case presents no question of waiving a statutory deadline. The statutory deadline was met.

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