

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.

Case IPR2015-00144

Patent 8,058,238

**DECLARATION OF HENRY H. GU IN SUPPORT OF OPPOSITION TO
MOTION TO CORRECT ACCORDED FILING DATE**

I, Henry H. Gu, declare as follows:

1. I am Senior IP Counsel with Cubist Pharmaceuticals, Inc. (“Cubist”).

I submit this declaration in support of Cubist’s Opposition to Motion to Correct Accorded Filing Date. I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts.

2. I have been IP Counsel with Cubist since October 2013. I have been a registered Patent Attorney since January 2006. I am familiar with the Patent and Trial Appeal Board’s rules.

3. On October 24, 2014, Cubist received three packages containing service copies of seven Petitions for *Inter Partes* Review. Ms. Donna Larochelle, a legal secretary at Cubist, opened the packages and handed them over to me without removing any of the contents. As part of my responsibilities as IP Counsel, I reviewed the packages and the contents. The packages consisted of two FedEx mailing envelopes and one bankers box shipped via FedEx. The bankers box included four Petitions for *Inter Partes* Review of U.S. Patent No. 8,058,238 and Exhibits 1001-1037. The packages did not contain a motion to request acceptance of a mailed petition.

4. I first became aware that Petitioners (“Agila”) had submitted a Petition for *Inter Partes* Review to the Board by mail, along with an accompanying motion to request acceptance of the mailed petition, on November 21, 2014, during

the conference call held with Agila and the Board. To my knowledge, no one at Cubist was aware of the petition submitted by mail, or the accompanying motion, prior to this date. To my knowledge, Agila never served Cubist with a copy of its motion to request acceptance of its mailed petition.

5. On December 3, 2014, I called the Board and spoke with Ms. Maria Vignone. I asked Ms. Vignone if the Board could provide Cubist with a copy of the motion to request acceptance of mailed petition filed by Agila. Later that same day, Ms. Vignone sent a copy of the motion to me by email.

6. Attached hereto as Exhibit 2002 is a true and correct copy of the Motion to Request Acceptance of Mailed Petition for *Inter Partes* Review of U.S. Patent No. 8,058,238 Under 37 C.F.R. §42.6(b)(2)(i)(A) that was sent to me via email by Ms. Vignone on December 3, 2014.

7. Attached hereto as Exhibit 2003 is a true and correct copy of an August 17, 2014 archived version of the USPTO.gov website page entitled “*Patent Review Processing System (PRPS)*.” This August 17, 2014 archived version is available at <https://web.archive.org/web/20140817025907/http://www.uspto.gov/ip/boards/bpai/prps.jsp>. I obtained this August 17, 2014 version on December 6, 2014, by inputting the URL of the current USPTO.gov *Patent Review Processing System (PRPS)* website, <http://www.uspto.gov/ip/boards/bpai/prps.jsp>, into the Internet Archive “WayBack Machine,” available at <https://archive.org/web/>.

8. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed in Lexington, Massachusetts on December 8, 2014.

Respectfully submitted,

Dated: December 8, 2014



Henry H. Gu
Registration No. 55,227