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

OPPOSITION TO MOTION TO CORRECT ACCORDED FILING DATE

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I. Introduction

Patent Owner ("Cubist") respectfully opposes Petitioner's Motion to Correct Accorded Filing Date (Paper No. 11) ("Motion to Correct"). Both submitted petitions—the electronic petition and the paper petition—violate statutory requirements that the Board *cannot* waive. The petitions also violate regulations that the Board *should* not waive. The Motion to Correct must therefore be denied.

II. The Petitions Did Not Meet the Statutory Requirements.

Petitioners ("Agila") filed two petitions with the Board: an electronic petition and a paper petition. Both petitions violate statutory provisions that cannot be waived. Indeed, it is well-recognized that government agencies such as the USPTO may not waive or modify statutory requirements, by regulation or otherwise. *See Baxter Int'l, Inc. v. McGaw, Inc.*, 149 F.3d 1321, 1334 (Fed. Cir. 1998) (finding that statutory requirements "may not be waived by the PTO"). The Board is thus precluded from instituting an *inter partes* review based on either petition and must deny the Motion to Correct.

First, the filing of Agila's electronic petition was completed on October 24, 2014, one day after the statutory deadline under 35 U.S.C. § 315(b). *See* Exh. 1041; Petition for *Inter Partes* Review (Paper No. 1) at p. 4 (acknowledging Cubist's service of complaint on Agila on October 23, 2013); Exh. 1035, Proof of Service of Agila (attesting to service of Agila on October 23, 2013). The Board

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