

**PROTECTIVE ORDER MATERIAL**

Paper No. \_\_\_\_  
Filed: August 25, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMNEAL PHARMACEUTICALS LLC and PAR PHARMACEUTICAL, INC.

Petitioners,

v.

JAZZ PHARMACEUTICALS, INC.

Patent Owner

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Case IPR2015-00554

Patent 7,668,730

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**PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY  
PURSUANT TO 37 C.F.R. § 42.51(b)(2)**

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**I. BACKGROUND**

Pursuant to 37 C.F.R. § 42.51 (b)(2) and the Board’s August 20, 2015 email (Ex. 2038), Jazz Pharmaceuticals, Inc. (“Jazz”) submits this motion for additional discovery regarding Petitioners’ failure to name all real parties in interest (“RPI”).

In its April 30, 2015 Preliminary Response, Jazz argued *inter alia*, that the Petition should not be considered due to Petitioners’ failure to identify all RPI. Paper 10 at 9-23. Pursuant to the Board’s Order, Petitioners responded to that argument on May 26 and Jazz replied on June 9. Papers 11, 13, 17. On July 29, the Board instituted trial based on the then-current evidence of record, relying on Par Pharmaceutical, Inc. (“Par Inc.”) representative Barry Gilman’s declaration for many of its RPI findings. Paper 20 at 13-19 (citing Ex. 1040).

Mr. Gilman’s declaration, however, was unsupported by any underlying documentation and relied, in part, on “information and belief.” *See* Ex. 1040. And Mr. Gilman was unable and/or unwilling to provide further evidence at his deposition. *See generally* Ex. 2033. Therefore, on August 6, Jazz requested that Petitioners provide a narrow set of specific documents to clarify the RPI issue: (1) specific billing records for this Petition and (2) employment agreements for Mr. Silverstein and Mr. Brown—the two individuals that Mr. Gilman testified are responsible for this Petition. *See* Ex. 2039 at 3. The parties exchanged emails regarding Jazz’s request, but Petitioners refused to produce anything. On August

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19, Jazz sought the Board’s intervention, which authorized this motion.

**II. THE DISCOVERY SOUGHT IS IN THE INTERESTS OF JUSTICE**

The Board may authorize additional discovery if it is shown to be in the “interests of justice.” 37 C.F.R. § 42.51(b)(2). As shown below, Jazz’s discovery requests satisfy the five *Garmin* factors applied by the Board. *See Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 at 6-7 (Mar. 5, 2013).

**A. More Than A Mere Allegation or Possibility**

Jazz satisfies the first *Garmin* factor, which requires “more than a mere allegation or possibility that something useful will be discovered.” *Id.* As discussed below, based on Mr. Gilman’s testimony, and evidence showing that Mr. Brown and Mr. Silverstein are employed by Par Inc.’s parent companies, it is beyond speculation that useful information exists in the requested records.

Petitioners do not deny that the requested billing and employment records exist. Instead, they oppose the discovery by asserting that Mr. Gilman already testified to these issues and that “Jazz simply cannot seek discovery on the mere possibility that it might find something inconsistent with Mr. Gilman’s declaration or testimony. . . .” Ex. 2040 at 1. But Mr. Gilman’s declaration did not address billing or employment records (Ex. 1040), and he was evasive when asked questions he perceived to be outside the scope of his declaration. Further, neither Petitioners nor Mr. Gilman relied on billing or employment records when claiming

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that Mr. Silverstein and Mr. Brown are employed by only Par Inc., and that Par Inc. is the “sole Par entity responsible for directing, controlling, and funding” the IPR. Ex. 1040 at ¶7; *see also* Paper 13 at 4, 7. The logical inference is that the withheld records do not support Petitioners’ assertions.

Billing records relating to this IPR will clearly be useful for determining the RPI. *See* Paper 20 at 17-18 (discussing who funded the IPR); *Corning Optical Commn’cs v. PPC Broadband*, IPR2014-00440, Paper 68 at 17, 20-21 (Aug. 18, 2015) (documents showing funding of IPR useful for RPI determination). At his deposition, Mr. Gilman was either unwilling or unable to provide definitive answers regarding any questions related to payment, revenues, and authorization to perform work on behalf of Par Inc.’s parent companies. *See* Ex. 2033 at 15-22, 26-30, 39-40, 53-56, 58-61.

The employment agreements will also provide useful information regarding which Par entity is employing the individuals “call[ing] the shots as it pertains to the [IPR].” Paper 20 at 17; *see also Corning*, IPR2014-00440, Paper 68 at 18 (employer of attorney directing RPI is useful for IPR determination). Jazz presented evidence that Mr. Silverstein holds himself out as an employee of only unnamed RPI Par Pharmaceutical Companies, Inc. (“Par Co.”) on LinkedIn (Ex. 2025), [REDACTED]

[REDACTED]

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