

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS II LLC
Petitioner

v.

NPS PHARMACEUTICALS, INC.
Patent Owner

IPR2015-00990 AND IPR2015-01093¹
Patent No. 7,056,886

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION FOR ADDITIONAL DISCOVERY**

¹ Per the Board's Order authorizing this opposition (*see, e.g.*, IPR2015-00990, Paper 8), the word-for-word identical paper is filed in each proceeding identified in the heading.

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Fed. R. Evid. 90110

Legislative History

H. Rep. No. 112-98 at 45-48 (2011)3

I. Introduction

The breadth and depth of the Patent Owner's requested discovery is well beyond that ever permitted by the Board. Granting Patent Owner's Motion would set a precedent for future proceedings that would harass petitioners, unduly burden the Board, and frustrate the intent of Congress to provide an expedited and streamlined validity review. Additionally, Patent Owner has not met its burden to show it is in possession of more than mere speculation that unnamed entities have any control, or a right to control, these proceedings.

Patent Owner suggests that virtually every shareholder and manager in a distinct legal business entity is a real party-in-interest, and seeks discovery that exceeds even these vast bounds. Patent Owner's own real party-in-interest designations, like those of virtually every other corporate participant in the *inter partes* review process, correctly do not paint with so broad a brush.

Patent Owner provides no basis for finding any exception to the general rule that corporate distinctions should be respected. Nor need Petitioner apologize for using legally-recognized structures for their intended purposes. Petitioner identified eight entities and two individuals and fully recognizes that challenging the RPI is page one of the Patent Owner response play book. This is *not* a case where Petitioner would have benefited from under-identifying the real parties-in-interest, for example, because an unnamed entity may be subject to estoppel. The

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