

COALITION FOR AFFORDABLE DRUGS II LLC
Petitioner

V.

NPS PHARMACEUTICALS, INC.
Patent Owner

Case No. IPR2015-00990 and IPR2015-010931

Patent No. 7,056,886

PETITIONER'S BRIEF IN RESPONSE TO THE BOARD'S REQUEST FOR ADDITIONAL BRIEFING PURSUANT TO 37 C.F.R. § 42.20(d)

¹ Per the Board's Order, the word-for-word identical paper is filed in each proceeding identified in the heading.



TABLE OF CONTENTS

INTR	RODU(CTION	
ARG	UMEN	NT	
I.	CFAD Has Standing to Bring This IPR		
	A.	The Statute and Regulation Regarding Standing Plainly Permit CFAD to Pursue Its Petition	
	B.	PO's Misleading Citation to Legislative History Does Not Show the Congress Created IPR Exclusively as an Alternative to Litigation, Does Not Bar this Petition	
II.	The A	Noerr-Pennington Doctrine Bars PO's Sanctions Claim	
	A.	The <i>Noerr-Pennington</i> Doctrine, Based on the First Amendment, Protects CFAD's Right to Bring an IPR Petition	
	B.	PO Has Failed to Establish That CFAD's Petition Falls Within the Narrow Sham Exception to the <i>Noerr-Pennington</i> Doctrine	
	C.	PO's Claims Are Legally Deficient in Other Respects	
III.		issal of this Proceeding as a Sanction Would Be Arbitrary and cious and would Violate Due Process	
IV.		Social Benefits/Costs Favor Addressing the Merits of Petitions Seek validate Poor-Quality Patents	ing
	A.	The Supreme Court and Congress Have Recognized the Strong Public Interest in Invalidating Poor-Quality Patents13	
	B.	Members of the Public Have Expressed a Strong Interest in Invalidating Poor-Quality Pharmaceutical Patents through IPR	



CONCLUSION	15
CERTIFICATION OF SERVICE.	17

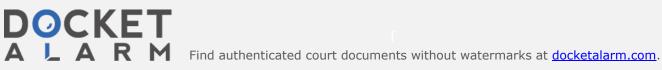


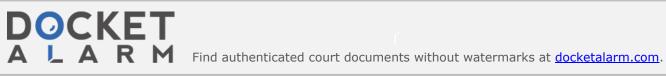
TABLE OF AUTHORITIES

Cases

Abbott Labs. v. Brennan, 952 F.2d 1346 (Fed. Cir. 1991)	6
Bill Johnson's Restaurants, Inc. v. National Labor Relations Board, 461 U.S. 731 (1983)	7
Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508 (1972)	6
Consumer Watchdog v. WARF, 753 F.3d 1258 (2014)	5
Dep't of Homeland Sec. v. MacLean, 135 S.Ct. 913 (2015)	3
Dot Hill Sys. Corp. v. Crossroads Sys., Inc., IPR2015-00822, Paper 18 (PTAB Sept. 17, 2015)	4
E.R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961)	6
FilmTec Corp. v. Hydranautics, 67 F.3d 931 (Fed. Cir. 1995)	7
Halliburton Co. v. Erica P. John Fund, Inc., 134 S. Ct. 2398 (2014)	9
In re Applications of High Plains Wireless, L.P., 15 F.C.C. Red. 4620 (2000)	12
Killip v. Office of Personnel Mgmt., 991 F.2d 1564 (Fed. Cir. 1993)	3
Lear v. Adkins, 395 U.S. 653 (1969)	.13.15



Loral Space & Communications, Inc. v. Viasat, Inc., IPR2014-00236, IPR2014-00239, IPR2014-00240, Paper 9 (PTAB July 7, 2014)	5
Nader v. Democratic Nat'l Comm., 555 F.Supp.2d 137 (D.D.C. 2008)	6,7,10
Pope Manufacturing Co. v. Gormully, 144 U.S. 224 (1892)	13
Prof'l Real Estate Investors, Inc. ("PRE") v. Columbia Picture. 508 U.S. 49 (1993)	
Proportion-Air, Inc. v. Buzmatics, 57 F.3d 1085, 1995 U.S. App. LEXIS 25871 (Fed. Cir. 1995)	6
Russello v. United States, 464 U.S. 16 (1983)	4
Satellite Broadcasting Co. v. FCC, 824 F.2d 1 (D.C. Cir. 1987)	12
SmithKline Beecham Corp. v. Apotex Corp., 403 F.3d 1331 (Fed. Cir. 2005)	13
WestLake Services, LLC, v. Credit Acceptance Corp., Case CBM2014-00176, paper 41 (PTAB Sept. 15, 2015)	5
Other Authorities	
U.S. Const. Amend. I.	6
37 C.F.R. § 42.12(7)	11
37 C.F.R. § 42.101	2
35 U.S.C. § 311(pre-AIA)	2
35 U.S.C. § 311(a)	2.4



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

