

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

Case Nos. IPR2015-00990 and IPR2015-01093
Patent No. 7,056,886

DECLARATION OF CHRISTOPHER E. KIRKPATRICK

NPS EX. 2033
CEAD v. NPS

I, Christopher E. Kirkpatrick, hereby declare the following:

1. I am the custodian of documents for the Coalition for Affordable Drugs II LLC (CFAD), which is the Petitioner in Case Nos. IPR2015-00990 and IPR2015-01093. I am also the General Counsel of Hayman Capital Management, L.P., which is identified as a real party-in-interest in the same proceedings. As part of my responsibilities in these positions, I am aware of the persons or entities that have the ability to control the business actions of CFAD.

2. I am authorized to provide this declaration as a representative of CFAD, J Kyle Bass and the “Hayman RPI,” which consist of Hayman Credes Master Fund, L.P., Hayman Orange Fund SPC – Portfolio A, Hayman Capital Master Fund, L.P., Hayman Capital Management, L.P., Hayman Offshore Management, Inc. and Hayman Investments, L.L.C., collectively.

3. I understand that Petitioner made the following statement with respect to real parties-in-interest in these proceedings:

Pursuant to 37 C.F.R. § 42.8(b)(1), Petitioner certifies that Coalition For Affordable Drugs II LLC (“CFAD”), Hayman Credes Master Fund, L.P. (“Credes”), Hayman Orange Fund SPC – Portfolio A (“HOF”), Hayman Capital Master Fund, L.P. (“HCMF”), Hayman Capital Management, L.P. (“HCM”), Hayman Offshore Management, Inc. (“HOM”), Hayman Investments, L.L.C. (“HI”), nXn Partners, LLC (“nXnP”), IP Navigation Group, LLC (“IPNav”), J Kyle Bass, and Erich Spangenberg are the real parties in interest (collectively, “RPI”). The RPI hereby certify the following information: CFAD is a wholly owned subsidiary of Credes. Credes is a limited partnership. HOF is a segregated portfolio company.

HCMF is a limited partnership. HCM is the general partner and investment manager of Credes and HCMF. HCM is the investment manager of HOF. HOM is the administrative general partner of Credes and HCMF. HI is the general partner of HCM. J Kyle Bass is the sole member of HI and sole shareholder of HOM. CFAD, Credes, HOF and HCMF act, directly or indirectly, through HCM as the general partner and/or investment manager of Credes, HOF and HCMF. nXnP is a paid consultant to HCM. Erich Spangenberg is 98.5% member of nXnP. IPNav is a paid consultant to nXnP. Erich Spangenberg is the 98.5% member of IPNav. Other than HCM and J Kyle Bass in his capacity as the Chief Investment Officer of HCM and nXnP and Erich Spangenberg in his capacity as the Manager/CEO of nXnP, no other person (including any investor, limited partner, or member or any other person in any of CFAD, Credes, HOF, HCMF, HCM, HOM, HI, nXnP or IPNav) has authority to direct or control (i) the timing of, filing of, content of, or any decisions or other activities relating to this Petition or (ii) any timing, future filings, content of, or any decisions or other activities relating to the future proceedings related to this Petition. All of the costs associated with this Petition will be borne by HCM, CFAD, Credes, HOF and/or HCMF.

IPR2015-00990, Paper 1 at pp. 3-5; IPR2015-01093, Paper 1 at pp. 3-4.

4. I further understand that, in response to a motion for Additional Discovery from the Patent Owner NPS Pharmaceuticals, Inc., the Board ordered as follows:

In particular, as to Request for Production No. 6, we authorize additional discovery only as to any agreements, in the possession of Petitioner, relating to the control or ability to control any aspect of the current proceeding by a party not designated as Petitioner or a real party-in-interest in the Petition. Such agreements include those indicating that any person or party (other than Petitioner or designated real parties-in-interest) provided direction

to, or had the authority to provide direction to, Petitioner or its counsel in relation to this proceeding, including persons or parties who reviewed, or were given the opportunity to review, papers filed in this proceeding.

IPR2015-00990, Paper 14 at p. 7; IPR2015-01093, Paper 14 at p. 7.

5. In response to this Order and at the request of Petitioner, I conducted a diligent search for any agreements in the possession of CFAD, the Hayman RPI or J Kyle Bass “relating to the control or ability to control any aspect of the current proceeding[s] by a party not designated as Petitioner or a real party-in-interest in the Petition[s].” I located no agreements in the possession of CFAD, the Hayman RPI or J Kyle Bass that meet this definition.

6. Further, my search located no agreements in the possession of CFAD, the Hayman RPI or J Kyle Bass “indicating that any person or party (other than Petitioner or designated real parties-in-interest) provided direction to, or had the authority to provide direction to, Petitioner or its counsel in relation to th[ese] proceeding[s].”

7. The fact that my search did not locate documents responsive to the Board’s Order comports with CFAD’s identification of the real parties-in-interest in its Petitions. As stated in the Petitions, only CFAD, Hayman Capital Management, L.P., J Kyle Bass, nXn Partners, LLC and Erich Spangenberg have “authority to direct or control (i) the timing of, filing of, content of, or any decisions or other activities relating to this Petition or (ii) any timing, future filings,

content of, or any decisions or other activities relating to the future proceedings related to th[ese] Petition[s].” IPR2015-00990, Paper 1 at pp. 4-5; IPR2015-01093, Paper 1 at p. 4. There is no person or party who reviewed, or was given the opportunity to review, papers filed in these proceedings, who provided direction to, or had the authority to provide direction to, Petitioner or its counsel (other than the Petitioner or designated real parties-in-interest, or their employees and counsel).

8. In addition, only certain of the designated real parties-in-interest (CFAD, Hayman Capital Management, L.P., Hayman Credes Master Fund, L.P., Hayman Orange Fund SPC – Portfolio A and Hayman Capital Master Fund, L.P.) are funding the costs for these proceedings. No one other than these designated real parties-in-interest is funding the costs for these proceedings.

9. Moreover, the counsel who file the papers in these proceedings on behalf of CFAD are given instructions only by CFAD, Hayman Capital Management, L.P. (or its employees), J Kyle Bass, nXn Partners, LLC (or its employees) or Erich Spangenberg.

Date: July 16, 2015


Christopher E. Kirkpatrick