

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.

Cases IPR2015-00990 and IPR2015-01093
(Patent 7,056,886 B2)¹

Before SHERIDAN K. SNEDDEN, *Administrative Patent Judge*.

SNEDDEN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ This order addresses issues that are the same in the identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are authorized to use this style heading when filing a single paper in each proceeding, provided that such heading includes a footnote attesting that “the word-for-word identical paper is filed in each proceeding identified in the heading.”

The Board has reviewed Patent Owner's Preliminary Responses filed in the above-captioned proceedings, which includes arguments related to the dismissal of the Petition for abuse of process. 37 C.F.R. §§ 42.12(a)(6) and 42.12(b)(8). We seek additional briefing from the parties addressing whether the Petition should be dismissed for abuse of process. 37 C.F.R. § 42.20(d). Accordingly, the parties are requested, but not required, to submit briefs addressing the question of whether the Petitions in the above-captioned proceedings should be dismissed for abuse of process. The parties' briefing should at least address the following:

- 1) the standing requirement for challenging the validity of that patent in an *inter partes* review under 35 U.S.C. § 311(a);
- 2) to what extent, if any, the business objective or intent of the Petitioner should be considered in reaching a determination of abuse of process;
- 3) the intent of Congress to provide an alternative to litigation and to provide a mechanism to increase patent quality by allowing expedited administrative patent challenges; and
- 4) the resulting social costs/benefits associated with a decision to address the merits of the Petitions versus a decision to dismiss the Petitions for abuse of process without reaching the merits of the Petitions.

Each party shall be limited to fifteen (15) pages, not including the cover sheet or certificate of service, for their respective briefs, which shall be strictly limited to issues concerning abuse of process and shall not be used as an opportunity to reargue the facts of the case. If either party requires

IPR2015-00990 and IPR2015-01093
Patent 7,056,886 B2

clarification of the scope of the briefing required by this Order, the parties may arrange promptly for a conference call with us to discuss this Order.

Unless further ordered by the Board, no reply briefs shall be submitted.

It is

ORDERED that Patent Owner is authorized to file a brief as described in this Order due seven (7) business days after filing of this order; and

FURTHER ORDERED that Petitioner is authorized to file an opposition to Patent Owner's brief as described in this Order due seven (7) business days after filing of Patent Owner's brief.

For PETITIONER:

Jeffrey D. Blake
Matthew L. Fedowitz
MERCHANT & GOULD P.C.
jblake@merchantgould.com
mfedowitz@merchantgould.com

For PATENT OWNER:

Joseph R. Robinson
Heather Morehouse Ettinger
Dustin B. Weeks
TROUTMAN SANDERS LLP
joseph.robinson@troutmansanders.com
heather.ettinger@troutmansanders.com
dustin.weeks@troutmansanders.com