Paper No. __
Filed: February 25, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COALITION FOR AFFORDABLE DRUGS VI LLC
Petitioner,

v.

CELGENE CORPORATION
Patent Owner

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Case IPR2015-01096
Patent 6,315,720

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**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO SUBMIT SUPPLEMENTAL INFORMATION**

Coalition for Affordable Drugs VI LLC ("CFAD") seeks to introduce three documents as supplemental information. It alleges that these documents "confirm[] public accessibility/availability of FDA Meeting Transcripts (Ex. 1013, 1014) and CDC Minutes (Ex. 1015) . . . ." Paper 36 at 2-3. Two documents are information disclosure statements ("IDS") that were submitted to the Patent and Trademark Office ("PTO") in 2011—more than a decade after the patent at issue in this IPR, U.S. Patent No. 6,315,720 (the "'720 patent"), was filed—in connection with other patents that are not at issue in this IPR. The other is a Federal Register notice announcing a meeting held by the Centers for Disease Control ("CDC"). None of the documents are proper supplemental information. CFAD's motion should be denied for two reasons.

*First*, CFAD fails to allege, let alone establish, that the supplemental information meets the requirements of 37 C.F.R. § 42.123(a). A party seeking to submit supplemental information under 37 C.F.R. § 42.123(a) must show that it is "relevant to a claim for which the trial has been instituted." CFAD acknowledges in a co-pending motion to submit supplemental information that, for supplemental information regarding the alleged public availability of a reference to be "relevant to a claim for which the trial has been instituted," the Board must have actually instituted trial on that reference. *See* IPR2015-01102, Paper 37 at 1 ("The Board included this Menill reference in the ground on which it instituted the trial. . . . As

such, the supplemental information for Menill . . . is relevant to a claim for which the trial has been instituted.").

CFAD does not and cannot make any similar assertion here. Instead, CFAD expressly admits that its supplemental information relates to references upon which "trial has ***not*** been instituted." Paper 36 at 1 ("In this proceeding, trial has ***not*** been instituted . . . based on FDA Meeting Transcripts . . . or CDC minutes.") (emphasis added).

Thus, CFAD's request to submit supplemental information regarding the alleged public accessibility/availability of ***non***-instituted references in this case is much different than where the Board has allowed the same type of supplemental information for ***instituted*** references in other cases. *See, e.g.*, *Crestron Elecs. v. Intuitive Bldg. Controls, Inc.*, IPR2015-01379, Paper 27 at 3-4 (Feb. 2, 2016) (permitting supplemental information relevant to the public availability of "references upon which trial was instituted"); *Palo Alto Networks, Inc. v. Juniper Networks, Inc.*, IPR2013-00369, Paper 37 at 3 (Feb. 5, 2015) (finding supplemental information regarding alleged public availability of certain references was related to a claim for which trial had been instituted because those "references serve[d] as the basis for the grounds of unpatentability authorized in this proceeding").

Because the supplemental information at issue in this motion is unrelated to a claim for which trial has been instituted, CFAD's motion should be denied.

*Second*, CFAD's motion lacks merit because the supplemental information cannot "confirm[] public accessibility/availability," as CFAD mistakenly alleges. *See* Paper 36 at 3. Indeed, the Federal Circuit has repeatedly held that the submission of a reference as part of an IDS does not constitute an admission that a cited reference is prior art. *See, e.g.*, *ResQNet.com, Inc. v. Lansa Inc.*, 594 F.3d 860, 866 (Fed. Cir. 2010); *Abbott Labs. v. Baxter Pharm. Prods., Inc.*, 334 F.3d 1274, 1279 (Fed. Cir. 2003). The Board has held the same. *See, e.g.*, *L-3 Commc'n Holdings v. Power Survey, LLC*, IPR2014-00832, Paper 9 at 16-17 (Nov. 14, 2014). Further, in this case, the IDS's that CFAD seeks to introduce as supplemental information were submitted to the PTO during prosecution of patents ***other*** than the '720 patent, and in 2011—***more than a decade*** after the '720 patent's October 2000 filing date. The IDS's are simply not relevant to the '720 patent's validity.

The Board has also held that a Federal Register ("FR") notice announcing a meeting is insufficient to show that any alleged minutes from or transcript of that meeting "*actually* was made available to the extent that interested, ordinarily skilled persons, exercising reasonable diligence, could have located it [before the patent-at-issue's critical date]." *Coal. for Affordable Drugs III LLC v. Jazz Pharms., Inc.*, IPR2015-01018, Paper 17 at 14-15 (Oct. 15, 2015) (emphasis original). Here, the "CDC Minutes" that CFAD submitted as Ex. 1015 appear to

have been obtained through a Freedom of Information Act request that was made in October 2003 (Ex. 1015 at 1-2)—***three years after*** the '720 patent's filing date. The FR notice does not show that the "CDC Minutes" were actually available any earlier and, thus, both the FR notice and the "CDC Minutes" are irrelevant to a claim for which trial has been instituted for this additional reason.

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For the foregoing reasons, the Board should deny CFAD's motion.

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