Paper No. __
Filed: July 29, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS VI LLC
Petitioner,

v.

CELGENE CORPORATION
Patent Owner

Case IPR2015-01102
Patent 6,315,720

PATENT OWNER MOTION FOR SANCTIONS
PURSUANT TO 35 U.S.C. § 316(a)(6) AND 37 C.F.R. § 42.12

TABLE OF CONTENTS

Page

I. INTRODUCTION

Inter partes review ("IPR") was designed as an expeditious and less costly alternative to federal district court litigation. It was not designed for the purpose to which it is aimed here—as a tool to affect the stock prices of public companies for financial gain, to the detriment of those companies and the investing public. By their own admission, the real parties in interest ("RPI") filed this and other petitions as part of their strategy to profit from affecting stock prices. Their petitions represent an ongoing abuse of the IPR process that has been and will continue to be an unwarranted burden on the Patent Trial and Appeal Board ("Board"), and on innovators like patent owner Celgene Corporation ("Celgene") and its shareholders. Celgene is confident in the strength of its patents, but should not be required to expend extensive resources defending them in the face of the RPI's abuse of process.

The RPI's abuse of process began in 2014 when they twice threatened to file IPRs against two Celgene patents, including those at issue in IPR2015-01092, -1096, -1102, and -1103. Specifically, RPI and self-described "patent troll" Erich Spangenberg (and his company IPNav, also an RPI) first threatened Celgene with IPRs in January 2014. Then in July 2014, they assisted a third party in its effort to obtain payment from Celgene in exchange for not filing nearly identical IPRs against the same patents. Notably, none of the threats came from anyone with a

legitimate business interest in the targeted patents or the technology that they cover. Instead, the threats were nothing more than an improper use of the IPR process solely for the RPI's financial gain.

When Celgene did not pay, Mr. Spangenberg/IPNav no longer had any financial incentive to file the IPRs, and did not do so at that time. Instead, they teamed up with RPI and hedge fund manager J. Kyle Bass, and together, they concocted a new scheme to profit from affecting companies' stock prices by filing IPRs. The Petition in this matter, which counsel for the RPI admitted is just a "rewrite" of the earlier threatened petitions, is part of that scheme. It is driven entirely by an admitted "profit motive" unrelated to the purpose of the American Invents Act ("AIA"), as set forth in the bill itself and its legislative history, and unrelated to any competitive interest in the validity of the challenged patents. Pursuant to 35 U.S.C. § 316(a) and 37 C.F.R. § 42.12, the Board has the power to and should sanction the RPI by dismissing this Petition as an abuse of process and an improper use of these proceedings.

II. PRIOR THREATS AND RELEVANT FACTS

From 2008 to 2013, Mr. Spangenberg was "very proud to be America's biggest patent troll," using IPNav to sue at least 1,638 companies. Ex. 2033 at 1. IPNav's business model involved sending vague demand letters, implicitly demanding payment. "The implied '*or else!*' ooze[d] from th[e] letter."

Renaissance Learning v. Doe, No. 11-166, 2011 WL 5983299, at *4 (W.D. Wisc. Nov. 29, 2011). The AIA was specifically enacted to curb such abusive tactics.

But the AIA did not deter Mr. Spangenberg and IPNav. Rather, they saw the AIA (and IPRs in particular) as an easier and more profitable opportunity than their normal "troll" business. They began abusing and misusing IPRs by threatening to file petitions with the goal of extracting "settlement" payments. They had no interest in the patents or the life-saving therapies that the patents protect. They simply saw a way to profit by using the IPR process for an improper purpose—coercing businesses into paying demands to avoid costly proceedings.[1]

Mr. Spangenberg, on behalf of IPNav, first threatened Celgene in a January 2014 email to Celgene's attorneys (Ex. 2034) that attached draft IPRs (and supporting expert declarations) against two Celgene patents: (1) the patent at issue in IPR2015-01092, U.S. Patent No. 6,045,501 (the "'501 patent") (Ex. 2035; Ex. 2036); and (2) U.S. Patent No. 6,315,720 (the "'720 patent") (Exs. 2037-2040), at issue in IPR2015-01096, -1102, and -1103. *See also* Ex. 2041. His email was

[1] Under New Jersey law (where Celgene is headquartered), this conduct amounts to extortion. *See* N.J. Stat. § 2C:20-5(g); *State v. Roth*, 289 N.J. Super 152 (1996) (finding extortion where defendant's threat was solely calculated to harm victim, and the only benefit to defendant was payment to make him go away).

DOCKET ALARM

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.