Paper No. _____
Filed: August 19, 2015

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

_____

CASE NO.: IPR2015-01102
PATENT NO. 6,315,720

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PETITIONER'S UNOPPOSED MOTION TO WITHDRAW THE DECLARATION OF DR. JULIE WU FROM ITS OPPOSITION TO PATENT OWNER'S MOTION FOR SANCTIONS PURSUANT TO 35 U.S.C. § 316(a)(6) AND 37 C.F.R. § 42.12

On July 29, 2015, Patent Owner filed a Motion for Sanctions Pursuant to 35 U.S.C. § 316(a)(6) and 37 C.F.R. § 42.12, requesting dismissal of Petitioner's Petition in IPR2015-01102 against U.S. Patent No. 6,315,720 for abuse of process. On August 12, 2015, Petitioner filed an Opposition to Patent Owner's Motion, including as Exhibit 1054 the declaration of Dr. Juan (Julie) Wu, Ph.D., M.S. On August 13, 2015, Patent Owner requested that Petitioner "provide Dr. Wu's availability for deposition by the close of business tomorrow." That same day, Petitioner rejected Patent Owner's request. On August 14, 2015, Patent Owner requested a Board call to address its position that "it is entitled to depose Petitioner's declarant before preparing its reply papers." Today, the parties participated in Patent Owner's requested call with the Board.

Petitioner files this unopposed motion in response to statements by the Patent Owner on today's call that it does not believe the legality or benefits of short-selling—the topics addressed by Dr. Wu's declaration—are relevant to the central issues of Patent Owner's Motion for Sanctions. Petitioner stated on the call that the Patent Owner put short selling at issue with attorney argument and press clippings disparaging short selling. Petitioner further stated it does not think it should be required to shoulder the burden and expense of a deposition at this stage of the proceeding because it chose to submit Dr. Wu's declaration in response to the attorney argument and press articles Patent Owner submitted. In any event,

after hearing argument, the Board stated at the end of the call that it was taking Patent Owner's request for a deposition under advisement—which meant the deposition issue would not be resolved until a future unknown date.

Therefore, as stated on today's call, in the interest of immediately resolving the deposition dispute, moving to the merits, and avoiding any further delay and expense from Patent Owner's motion practice and deposition request, Petitioner requests that Dr. Wu's declaration be withdrawn. Petitioner will instead rely on the short selling evidence it submitted based on the congressional testimony of Professor Owen Lamont at Exhibit 1073 (cited on page 6 of Petitioner's Response).

Petitioner's Response to Patent Owner's Motion for Sanctions cited Dr. Wu's declaration in two places: the bottom of page 6, and footnote 2 on page 10.

With respect to the page 6 references to Dr. Wu's declaration, Petitioner requests that portions of Petitioner's Response be excised as indicated in the screen shot on the following page:

The balance of PO's "relevant facts" primarily quotes various press reports and editorials speculating about or criticizing CFAD for filing Petitions to make a profit. (POM at 5-7, quoting WSJ, Business Insider, Law360, Reuters). None of these articles are evidence—and even if they were they do not establish abuse. The fact is the RPI have not engaged in any misconduct, much less abuse or improper use of these proceedings. In contrast to press gossip, ~~the attached declaration from Dr. Wu (Ex. 1054)— a Finance professor and short selling expert (*id.*, ¶¶ 2-12) establishes that~~ short selling is common, legal, and regulated ~~(*id.*, ¶¶ 13-19).~~ Markets, shareholders, the investing public, and even shorted companies can and do benefit from short selling. ~~(*Id.*, ¶¶ 20-25.)~~ PO's suggestions to the contrary (POM at 5-7, 11-14) are baseless. ~~(Ex. 1054, ¶¶ 26-31.)~~ (*See* ~~*also*~~ Ex. 1073 at 3-4.)

The above page 6 paragraph with the stricken portions removed results in the following revised Petitioner Response:

The balance of PO's "relevant facts" primarily quotes various press reports and editorials speculating about or criticizing CFAD for filing Petitions to make a profit. (POM at 5-7, quoting WSJ, Business Insider, Law360, Reuters). None of these articles are evidence—and even if they were they do not establish abuse. The fact is the RPI have not engaged in any misconduct, much less abuse or improper use of these proceedings. In contrast to press gossip,

short selling is common, legal, and regulated .

Markets, shareholders, the investing public, and even shorted companies can and do benefit from short selling. PO's suggestions to the contrary (POM at 5-7, 11-14) are baseless. (*See* Ex. 1073 at 3-4.)

For the footnote 2 (page 10) reference to Dr. Wu's declaration, Petitioner requests Petitioner's Response be excised as indicated below:

> [2] PO's *Heck v. Humphrey* quote is dicta, but "a ***perversion*** of lawfully initiated process to ***illegitimate*** ends" is consistent with CFAD's decisions analyzing abuse of process. Merely filing a petition is not and cannot be a perversion of the process (unless fraudulent or a "sham"), and short selling is not illegal. ~~(*See* Ex. 1054, ¶¶ 13-19.)~~ PO's FCC cites found that—unlike the Petitions here—the petitions at issue "do not serve the public interest." 5 FCC Rcd. 3911, 3912 (1999).

The above footnote 2 with the stricken portions removed, and with the citation to Dr. Wu's declaration replaced with the exact same Ex. 1073 cite appearing on page 6, results in the following revised Petitioner Response:

> [2] PO's *Heck v. Humphrey* quote is dicta, but "a ***perversion*** of lawfully initiated process to ***illegitimate*** ends" is consistent with CFAD's decisions analyzing abuse of process. Merely filing a petition is not and cannot be a perversion of the process (unless fraudulent or a "sham"), and short selling is not illegal. (*See* Ex. 1073 at 3-4.) PO's FCC cites found that—unlike the Petitions here—the petitions at issue "do not serve the public interest." 5 FCC Rcd. 3911, 3912 (1999).

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