UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS V LLC,
Petitioner,

v.

BIOGEN INTERNATIONAL GmbH,
Patent Owner.

Case IPR2015-01086 (Patent 8,759,393 B2)
Case IPR2015-01136 (Patent 8,399,514 B2)[1]

REPLY IN SUPPORT OF MOTION FOR DISCOVERY

[1] The word-for-word identical paper is filed in each proceeding identified in the caption.

Table of Contents

Table of Authorities

Cases **Page(s)**

Federal Regulations

Other Authorities

On July 7, 2015, the Board authorized Biogen to file a reply to Petitioner's opposition to Biogen's motion for additional discovery.

As an initial matter, the Opposition should be expunged or returned for improperly single spacing footnotes and block-quoted text. 37 C.F.R. § 42.6. Properly formatted, the brief would exceed the 15-page limit. 37 C.F.R. § 42.24. Moreover, Petitioner's assertions in defense of its short-selling strategy provide no basis to deny production of two readily accessible documents.

I. Biogen's Request Is in the Interest of Justice

A. Petitioner Does Not Dispute *Garmin* Factors Two Through Five

Petitioner does not dispute that Biogen's request meets the requirements of *Garmin* factors two through five. Thus, it is undisputed that the request does not seek litigation positions, is clear, is not overly burdensome, and seeks information Biogen cannot obtain by other means. Nor does Petitioner dispute that the requested documents exist and would be easy to obtain. These factors weigh strongly in favor of granting Biogen's request.

B. The Requested Documents Are Useful

1. Taking Short Positions Is the Primary Purpose of the IPRs

Petitioner argues that taking short positions against pharmaceutical companies is not a *per se* abuse of process because it is not the primary purpose of the IPR petitions. (Opp'n at 4-9.) According to Petitioner, because it stands by the merits of the petitions and allegedly will not settle, no abuse of process can occur.

But because real parties-in-interest are primarily using the IPR process to seek to depress stock prices and benefit through short sales of that stock, it is immaterial whether a proper secondary purpose exists. Restatement (Second) of Torts § 682 (1977) (**Ex. 2004**). Although Petitioner claims to be concerned about the cost of Tecfidera® and patent quality, the stated *primary* purpose of the hedge funds financing these petitions is to take short positions against pharmaceutical companies. (**Ex. 2001** at 5.) Petitioner, which "admits . . . an economic interest," does not dispute that taking short positions is a primary purpose of the hedge funds. (Opp'n at 11.) Investors contributing millions of dollars to these funds are doing so to turn a profit, not for any altruistic purposes or the betterment of the patent system. (*See* **Ex. 2001** at 6-7.) Because the hedge funds are financing the IPRs, the petitions must be connected with their primary purpose. (*See id.* at 5.) Petitioner does not assert otherwise. Petitioner's stated unwillingness to settle does not show any proper purpose, but is consistent with the hedge funds' primary purpose of short selling.

Filing IPRs against pharmaceutical companies and taking short positions against those companies is more than having an "economic interest." (*See* Opp'n at 7.) It also differs from generic drug companies trying to enter the market with a product. Petitioner has no product to market. Biogen has presented a threshold amount of evidence and reasoning showing that the requested documents will be

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.