

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHARMACOSMOS A/S
Petitioner

v.

LUITPOLD PHARMACEUTICALS, INC.
Patent Owner

Cases¹ IPR2015-01490; Patent 7,754,702 B2
IPR2015-01493; Patent 8,431,549 B2
IPR2015-01495; Patent 8,895,612 B2

Petitioner's Objection to Patent Owner Response in Lieu of Motion
(to Patent Owner Response in Lieu of Motion, Paper 9)

¹ As required by Paper 8, Petitioner attests that the word-for-word identical paper is being filed in each proceeding identified in the heading.

The Board gave Patent Owner permission to submit a motion requesting authorization to file a certificate of correction to change “103” to “10³” in claim 26 of US Patent No. 7,754,702, and in claim 12 of US Patent No. 8,895,612 by October 20, 2015. However, the Patent Owner instead filed a “Response in Lieu of Motion” (“Response”), electing not to file a motion requesting a certificate of correction.

Since Patent Owner chose not to file a motion, Patent Owners’ paper couched as a “Response,” but containing argument, is inappropriate and should not have been filed. At this particular stage in the proceedings, such arguments are not permitted. As such, Petitioner respectfully requests that the Board disregard the arguments made therein. In the event that the Board chooses to consider the arguments presented in the “Response,” Petitioner disagrees with Patent Owner’s statement that “Petitioner is thus not prejudiced by the Board agreeing that ‘n’ is correctly about ‘10³’”. Response at 1.

Moreover, and for clarity’s sake, Petitioner states that in response to Patent Owners’ inquiry received after the Board granted permission to file a motion, Petitioner indicated an inability to consent at the present time to a motion to correct (1) certain claims; and (2) a portion of the specification. This second issue was not identified to the Board as a basis for the contemplated motion. Petitioner did,

IPR2015-01490; IPR2015-01493; IPR2015-01495

however, express a willingness to consider a motion explaining the basis for the proposed amendments.

Respectfully submitted,

BAKER BOTTS L.L.P.

October 30, 2015

Date

/s/ Lisa Kole

**ATTORNEYS FOR PETITIONER,
PHARMACOSMOS A/S**

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing paper is being served on October 30, 2015, by filing through the Patent Review Processing System and delivering a copy via email to the counsel for Patent Owner at the addresses of record:

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Respectfully submitted,

Dated: October 30, 2015

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