

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

**FRESENIUS KABI USA LLC  
Petitioner,**

**v.**

**CUBIST PHARMACEUTICALS, INC.  
Patent Owner.**

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**IPR2015-01572**

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**REQUEST FOR REFUND OF POST-INSTITUTION FEE  
FOR *INTER PARTES* REVIEW OF U.S. PATENT 8,058,238**

**Mail Stop "PATENT BOARD"  
Patent Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**I. STATEMENT OF THE PRECISE RELIEF REQUESTED**

Petitioner Fresenius Kabi USA LLC (“Petitioner”) respectfully requests a refund of \$14,000, the post-institution fee Petitioner paid for its Petition for *Inter Partes* Review of U.S. Patent 8,058,238 (“the ’238 patent”), assigned case number IPR2015-01572. A refund is appropriate because the Board declined to institute trial in IPR2015-01572.

**II. STATEMENT OF FACTS**

On July 10, 2015, Petitioner filed a Petition for *Inter Partes* Review of claims 20, 45-47, 49-52, 54-91, 108-111, 147-150, 168-175, 178, 180-183, and 190-192 of the ’238 patent. (“Petition,” Paper No. 2.)

On September 1, 2015, prior to the Board’s decision on whether to institute IPR, Petitioner and Patent Owner jointly submitted a motion to limit IPR2015-01572 to claim 91, and to seek removal of claims 20, 45-47, 49-52, 54-90, 108-111, 147-150, 168-175, 178, 180-183, and 190-192 from consideration in this proceeding.

On September 15, 2015, the Board granted the joint motion to limit the instant IPR to claim 91, and to remove the other 69 claims. (Paper No. 15.)

Because the instant IPR was narrowed to a single claim, on October 12, 2015, Petitioner requested a refund of \$22,000, the portion of the post-institution

fee that was due to claims in excess of 15. 37 C.F.R. § 42.15(a)(4). On October 14, 2015, the Board issued a Notice of Refund of \$22,000. (Paper No. 17).

Because the Board has declined to institute *Inter Partes* review of claim 91 of the '238 patent, Petitioner hereby requests refund of \$14,000, the portion of the post-institution fee that has not yet been refunded by the Board. Payment of the post-institution fee was processed through PRPS on July 10, 2015, and charged to the undersigned's Deposit Account No. 06-0923.

### III. CONCLUSION

Upon review and approval of this request, Petitioner respectfully requests that the Board credit the remaining \$14,000 of the post-institution fee to Deposit Account No. 06-0923.

Dated: February 19, 2016

Respectfully submitted,

/Cynthia Lambert Hardman/

Elizabeth J. Holland (Reg. No. 47,657)

Robert V. Cerwinski

Cynthia Lambert Hardman

(Reg. No. 53,179)

Goodwin Procter LLP

620 Eighth Avenue

New York, NY 10018

Tel: 212-813-8800

Fax: 212-355-3333

*Counsel for Petitioner Fresenius Kabi USA  
LLC*

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that “**REQUEST FOR REFUND OF POST-INSTITUTION FEE FOR *INTER PARTES* REVIEW OF U.S. PATENT 8,058,238**” was served by electronic mail on this 19th day of February, 2016 on the following:

Emily R. Whelan  
Andrej Barbic, Ph.D.  
Gerard M. Devlin, Jr.  
Lisa A. Jakob  
Emily.Whelan@wilmerhale.com  
Andrej.Barbic@wilmerhale.com  
Gerard.Devlin@merck.com  
Lisa.Jakob@merck.com

Dated: February 19, 2016

/Cynthia Lambert Hardman/  
Elizabeth J. Holland (Reg. No. 47,657)  
Robert V. Cerwinski  
Cynthia Lambert Hardman  
(Reg. No. 53,179)  
Goodwin Procter LLP  
620 Eighth Avenue  
New York, NY 10018  
Tel: 212-813-8800  
Fax: 212-355-3333

*Counsel for Petitioner Fresenius Kabi USA  
LLC*