

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

FRESENIUS KABI USA LLC,  
Petitioner,

v.

CUBIST PHARMACEUTICALS, INC.,  
Patent Owner.

---

Case IPR2015-01572  
Patent 8,058,238

---

Mailed: July 29, 2015

Before Cathy Underwood, *Trial Paralegal*

NOTICE OF FILING DATE ACCORDED TO PETITION  
AND  
TIME FOR FILING PATENT OWNER PRELIMINARY RESPONSE

The petition for *inter partes* review, in the above proceeding has been accorded the filing date of July 10, 2015.

A review of the petition identified the following defect(s):

*Claim charts should only be used to provide an element-by-element showing as to how the prior art teaches the limitations of a claim (e.g., citations to a prior art reference, quotations from a prior art reference). Claim charts may not include arguments, claim construction, statements of the law, or detailed explanations as to why a claim limitation is taught or rendered obvious by the prior art. A mere citation to an expert declaration (e.g., “See Ex. 1015 ¶ 29”) in a claim chart is permissible, but anything more than a mere citation is improper.*

Petitioner must correct the defect(s) within **FIVE BUSINESS DAYS** from this notice. Failure to correct the defect(s) may result in an order to show cause as to why the Board should institute the trial. No substantive changes (e.g., new grounds) may be made to the petition.

Patent Owner may file a preliminary response to the petition no later than three months from the date of this notice. The preliminary response is limited to setting forth the reasons why the requested review should not be instituted. Patent Owner may also file an election to waive the preliminary response to expedite the proceeding. For more information, please consult the Office Patent Trial Practice Guide, 77 Fed. Reg. 48756 (Aug. 14, 2012), which is available on the Board Web site at <http://www.uspto.gov/PTAB>.

Patent Owner is advised of the requirement to submit mandatory notice information under 37 C.F.R. § 42.8(a)(2) within 21 days of service of the petition.

The parties are encouraged to use the heading on the first page of this Notice for all future filings in the proceeding.

The parties are advised that under 37 C.F.R. § 42.10(c), recognition of counsel *pro hac vice* requires a showing of good cause. The parties are authorized to file motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c). Such motions shall be filed in accordance with the “Order -- Authorizing Motion *for Pro Hac Vice* Admission” in Case IPR2013-00639,

IPR2015-01572  
Patent 8,058,238

Paper 7, a copy of which is available on the Board Web site under  
“Representative Orders, Decisions, and Notices.”

The parties are reminded that unless otherwise permitted by 37 C.F.R. § 42.6(b)(2), all filings in this proceeding must be made electronically in the Patent Review Processing System (PRPS), accessible from the Board Web site at <http://www.uspto.gov/PTAB>.

If there are any questions pertaining to this notice, please contact Cathy Underwood at 571-272-8358 or the Patent Trial and Appeal Board at 571-272-7822.

**PETITIONER:**

Elizabeth Holland  
[eholland@goodwinprocter.com](mailto:eholland@goodwinprocter.com)

Cynthia Hardman  
[chardmani@goodwinprocter.com](mailto:chardmani@goodwinprocter.com)

**PATENT OWNER:**

General Counsel  
Intellectual Property Department  
Cubist Pharmaceuticals, Inc.  
65 Hayden Avenue  
Lexington, MA 02421

and

Robin Riley  
75 East 55th Street  
New York, Ny 10022