

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LANNETT HOLDINGS, INC.  
Petitioner

v.

ASTRAZENECA AB  
Patent Owner

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Case IPR2015-01629  
Patent No. 6,750,237

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**LANNETT HOLDINGS, INC.'S REPLY TO  
ASTRAZENECA AB'S PRELIMINARY RESPONSE**

AstraZeneca AB's ("Astra AB's") argument that the Petition is time-barred lacks legal and factual support. A **valid** complaint must be **properly** served on a petitioner in order to trigger the 35 U.S.C. § 315(b) time-bar. Here, Astra AB did not properly serve a complaint on Lannett Holdings, Inc. ("Lannett") but instead carried-out ineffective service on a registered agent. Because Astra AB failed to comply with the Delaware statute governing service on a registered agent, Lannett was not served prior to July 28, 2014, with a complaint alleging infringement. As the Petition was filed on July 28, 2015, the § 315(b) time bar is inapplicable. In any event, there was no service of a valid complaint because, by Astra AB's own admission, the complaint it filed does not establish subject matter jurisdiction in the Delaware District Court and could not be a time bar even if it had been served.

## **I. Facts**

On July 25, 2014, Astra AB and Impax Laboratories, Inc. ("Impax") filed a complaint against Lannett in the District of Delaware. The complaint alleged infringement of the '237 patent (the "First Action"), and stated, in part: "[Astra AB] is the owner by assignment of the '237 patent and has the right to sue for infringement thereof." *See* Ex. 2001 at ¶ 24. On July 29, a proof of service was filed in the form of an affidavit from a process server. *See* Ex. 2002. The affidavit fails to identify the individual who was served, notwithstanding that it specifically calls for the "name of [the] individual" receiving service. *See id.*

Five days later, Astra AB and Impax, now joined by AstraZeneca UK Limited (“Astra UK”), filed a second complaint against Lannett again alleging infringement of the ‘237 patent (the “Second Action”). The only significant difference between the complaints was in the purported ownership of the patent. Specifically, the plaintiffs represented in the second complaint that “[Astra AB] and [Astra UK] own all rights, title, and interest in the ‘237 patent and have the right to sue for infringement thereof.”<sup>1</sup> See Ex. 2005 at ¶ 25. A proof of service was filed in the form of a new affidavit from a process server, and identified the specific individual who was served. See Ex. 1030

Lannett moved to dismiss, without answering, the First Action for lack of subject matter jurisdiction, asserting that the named plaintiffs lacked standing because co-owner Astra UK was missing from that action. The court consolidated the actions and dismissed the motion “without prejudice to its renewal after discovery is complete.”<sup>2</sup> Ex. 2011, at 3. Pointedly, the court noted that it did not need to address the standing issue at that point because “[t]he consolidated case has all necessary plaintiffs.” *Id.*

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<sup>1</sup> The District Court characterized the First and Second Actions as “just the same case, albeit with an extra plaintiff in the second case.” Ex. 2011 at 2.

<sup>2</sup> The current discovery cutoff date in the consolidated action is March 18, 2016.

## II. Argument

### A. The Complaint in the First Action was not Properly Served

The one-year period under § 315(b) did not begin to run until July 31, 2014, the date that the service requirements of the applicable Delaware statutes were first satisfied by service of the complaint in the Second Action. Because the Petition was filed within one year from this date, on July 28, 2015, the Petition was timely.

Astra AB has provided no evidence that any person was served and has therefore failed to establish that the complaint in the First Action was served as required by Delaware law. While Delaware law allows service via registered agent, Astra AB neglects to mention the requirements for service of a limited liability company such as CSC Entity Services, LLC (“CSC”): “[s]ervice of legal process upon any domestic limited liability company *shall be made by delivering a copy personally to any manager* of the limited liability company in the State of Delaware . . . .” Del. Code Title 6, § 18-105 (Ex. 1031) (emphasis added).

Astra AB was required to produce evidence that delivery was “personally to any manager” of CSC. Astra AB has not produced any such evidence. The only evidence on the record is a facially deficient affidavit that lists “CSC Entity Services LLC” as the name of the *individual* served with the complaint for the First Action. *See* Ex. 2002 (below) (yellow highlighting added).

I served the summons on (name of individual) CSC Family Services LLC, who is  
designated by law to accept service of process on behalf of (name of organization) Lannett  
Holdings Inc on (date) 7-25-14; or

The summons clearly requires a person to be named and identified so that compliance with the statute can be demonstrated – this plainly was not done.

Accordingly, service has not been made. *See Church-El v. Bank of New York*, 2013 WL 1190013, \*5 (D. Del. Mar. 21, 2013) (holding service not proper where plaintiff failed to follow all steps necessary under relevant Delaware statute) (Ex. 1032); *see also Hovde Acquisition, LLC v. Thomas*, 2002 WL 1271681, \*6 (Del. Ch. June 5, 2002) (same) (Ex. 1031). Because there was no service of the first complaint, the time bar of § 315(b) was not triggered.

Astra AB’s waiver argument is a red herring. Waiver, even if it had occurred, does not remove § 315(b)’s statutory requirement of effective service. *See Macauto U.S.A. v. BOS GmbH & KG*, IPR2012-00004 (PTAB Jan. 24, 2013) (Paper 18 at 15) (“The statute requires that the service date of the complaint be more than a year before the petition was filed.”). Any action by Lannett that may have resulted in waiver of its own rights cannot somehow cure Astra AB’s defective service. *See Advanced Surgery Ctr. v. Connecticut Gen. Life, Ins. Co.*, 2012 WL 3598815, \*10 (D.N.J. July 31, 2012) (holding that waiver of challenge to service that occurred when defendant’s motion to dismiss did not contest service

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