UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS VII LLC,
Petitioner,

v.

POZEN INC.,
Patent Owner.

IPR2015-01718
Patent 8,945,621

PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR REHEARING OF THE DECISION TO INSTITUTE TRIAL

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As authorized by the Board by email on March 10, 2016, Petitioner files this Opposition to Patent Owner's Request for Rehearing of the Decision to Institute Trial filed on March 4, 2016 (Paper 19).

I. INTRODUCTION

There are two distinct phases of an IPR proceeding—an institution phase and a merits phase. *See Achates Reference Publ'g, Inc. v. Apple Inc.*, 803 F.3d 652, 654–55 (Fed. Cir. 2015). Patent Owner's Request for Rehearing is an attempt to short-circuit this two-part process and skip the merits phase of this proceeding.

During the first phase of this proceeding, the Board considered the information presented in the Petition and the Preliminary Response and found that the "Petition establishes a reasonable likelihood" that claims 1–16 of the '621 patent are unpatentable on both Grounds 1 and 2 of the Petition. Decision at 21. The Board also raised the issue of whether the final "wherein" clause of the independent claims should be entitled to patentable weight. Decision at 15, 20.

The second phase of this proceeding will conclude with the Board making a final determination—on the merits—as to the patentability of each claim. *See* Decision at 21 ("[W]e have not made a final determination with respect to the patentability of any claim."). Patent Owner's Request for Rehearing urges the Board to bypass the merits phase and to prematurely conclude that the claims are

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