

For the Petitioner

Paper No. \_\_\_\_

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COALITION FOR AFFORDABLE DRUGS V LLC;  
HAYMAN CREDES MASTER FUND, L.P.;  
HAYMAN ORANGE FUND SPC – PORTFOLIO A;  
HAYMAN CAPITAL MASTER FUND, L.P.;  
HAYMAN CAPITAL MANAGEMENT FUND, L.P.;  
HAYMAN OFFSHORE MANAGEMENT, INC.;  
HAYMAN INVESTMENTS, LLC;  
NXN PARTNERS, LLC;  
IP NAVIGATION GROUP, LLC;  
J KYLE BASS, and ERICH SPANGENBERG,  
Petitioners,

v.

BIOGEN MA INC.,  
Patent Owner.

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Case IPR2015-01993  
Patent 8,399,514 B2

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**PETITIONER REPLY TO MOTION TO ANTEDATE**

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## **I. Introduction**

Kappos 2006 qualifies as prior art under 35 U.S.C. §102(b) and cannot be antedated because it was published more than one year prior to February 7, 2008, the earliest possible effective filing date for U.S. Patent 8,399,514 (“the ‘514 patent”).

Nonetheless, Biogen attempts to remove Kappos 2006 as a prior art reference against ‘514 patent claims 1-16 and 20 by alleging conception prior to Kappos’ formal publication date of May 30, 2006 (**Ex. 1020** at 3) coupled with diligence during the critical period which runs from prior to that publication date up to the February 8, 2007 filing date of Biogen’s provisional application 60/888,921 (“the ‘921 provisional”). *See* Motion at 2, 6, 8 and 24.

Biogen’s Motion to Antedate fails for two reasons. First, the ‘921 provisional is not a constructive reduction to practice of the invention claimed in the ‘514 patent. Second, there is at least an eight-month diligence gap between the May 30, 2006 publication date of Kappos 2006 and the filing of the ‘921 provisional.

## **II. Biogen is Not Entitled to a February 8, 2007 Priority Date**

To receive benefit of a provisional application’s filing date, a provisional application must provide §112 support for later-claimed subject matter. 35 U.S.C. §119(e)(1) (pre-AIA). As established in Petitioner’s Reply to Biogen Opposition,

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