

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARGENTUM PHARMACEUTICALS LLC  
Petitioner

v.

RESEARCH CORPORATION TECHNOLOGIES, INC.  
Patent Owner

Patent No. RE38,551

Issue Date: July 6, 2004

Title: ANTICONVULSANT ENANTIOMERIC AMINO ACID DERIVATIVES

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*Inter Partes* Review No. IPR2016-00204

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**UNOPPOSED MOTION TO CORRECT A TYPOGRAPHICAL MISTAKE  
IN THE PETITION UNDER 37 C.F.R. § 42.104(c)**

Petitioner submits the present motion under 37 C.F.R. § 42.104(c) to correct a typographical error in the Petition filed November 23, 2015 (Paper 2).

### **I. Request to Substitute Replacement Paper 2**

Petitioner Argentum Pharmaceuticals LLC hereby moves to substitute a replacement Petition (Paper 2) to correct a typographical error in the figure under the heading for Ground 2A on page 34. Petitioner submits herewith a marked-up version of the Petition showing the proposed correction along with a corresponding clean Proposed Substitute Petition. Petitioner certifies that this is the only change being made. A proposed Amended Petition For Inter Partes Review and a marked-up version illustrating the change are concurrently filed as Exhibits 1036 and 1037. Opposing counsel has stated that they do not oppose this motion. Authorization to file this motion was granted by the Board on February 5, 2016.

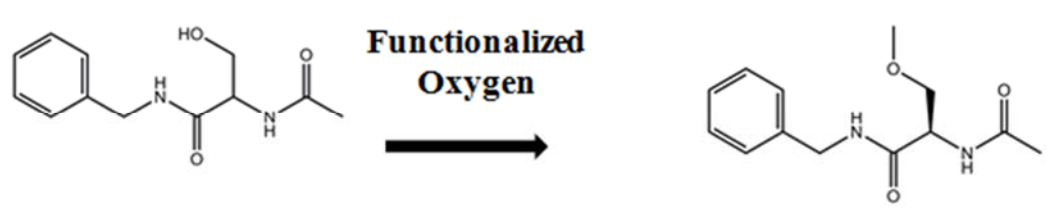
### **II. Facts and Description of the Typographical Error**

The as-filed Petition contains a typographical error in the label of the figure under the heading for Ground 2A on page 34. The heading incorrectly labels the compound as the “Methyl compound (Cortes, AAB).” The label should read “Hydroxymethyl compound (Choi, 2d),” as is evident from the heading for Ground 2A, the detailed analysis of why the challenged claims are obvious under Ground 2A (see pages 34-44 of the as-filed Petition), and the figure provided in the introduction of the Petition on page 4.

The excerpt below identifies the error as the stricken text, along with the correct label underlined.

Patent No. RE38,551  
Petition For *Inter Partes* Review

**C. Ground 2A: Claims 1-9 Are Obvious Over Choi and Kohn 1991**



Hydroxymethyl compound  
(Choi 2d)  
~~Methyl compound~~  
(Cortes, ~~AAB~~)

Lacosamide

1. **Choi and Kohn 1991 are prior art**

Choi is prior art under § 102(b) because the '551 patent is entitled only to a priority date of March 1997 (see Part IX *infra*), and Choi was published on September 1995. Ex. 1010 at cover page. Even if the '551 patent were entitled to a priority date of March 15, 1996, Choi qualifies as prior art under § 102(a). Kohn 1991 published in 1991 and is therefore prior art under § 102(b), regardless of the '551 patent's priority date.

### III. Effect of Correction

When considering a motion to correct, the Board will consider any substantial substantive effect, including any effect on the patent owner's ability to file a preliminary response." See Final Rule, 77 Fed. Reg. 48,680, 48,699 (Aug.

14, 2012). Here, Patent Owner would not be prejudiced by the proposed correction because the incorrect label is plainly a typographical error which Patent Owner would immediately recognize. As explained, the contents of the Petitioner make clear what the correct label for the figure under Ground 2A on page 34 should have been. Indeed, the correct information is provided elsewhere in the petition. Further, the entry of the Substitute Petition will have no effect on Patent Owner's ability to file a Preliminary Patent Owner Response, should it decide to do so.

#### **IV. Conclusion**

Accordingly, Petitioner respectfully requests that the Board enter the attached Substitute Petition.

Dated: February 10, 2016

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing motion together with all exhibits and other papers filed therewith will be served on February 5, 2016, by email to the attorney(s) of record for the patent at the following addresses:

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