

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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TEVA PHARMACEUTICALS USA, INC.,  
Petitioner,

v.

INDIVIOR UK LIMITED  
(F/K/A RB PHARMACEUTICALS LIMITED),  
Patent Owner.

Case No. IPR2016-00280  
Patent No. 8,475,832

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**PATENT OWNER'S MOTION TO CHANGE THE DECEMBER 3, 2015  
FILING DATE TO DECEMBER 4, 2015**

## I. INTRODUCTION

As authorized in the Board's Order dated February 18, 2016 (Paper No. 8), Patent Owner Indivior UK Limited submits the present Motion to Change the December 3, 2015 Filing Date to December 4, 2015.

Petitioner was served with a complaint asserting U.S. Patent No. 8,475,832 at issue in the present proceeding ("the '832 patent") on December 3, 2014. Therefore, in order for its petition not to be time-barred under 35 U.S.C. § 315(b), the petition must be accorded a filing date no later than December 3, 2015.

There is no dispute, however, that Petitioner did not even attempt service of the petition or its exhibits until *December 4, 2015*. Thus, the statutory requirements were not met until December 4, mandating a filing date of December 4, 2015. Additionally, although the regulatory filing date requirement for service of the petition may be waived, the Board should refrain from doing so here, given Petitioner's continued misrepresentation of the date of service as set forth in the original and Amended Certificates of Service. Thus, based on the statutory filing date requirements, and independently based on the regulatory filing date requirements, the filing date here should be changed to December 4, 2015, and the petition denied as time-barred under 35 U.S.C. § 315(b).

## II. STATEMENT OF MATERIAL FACTS

As admitted in the Petition, "Petitioner was served with a complaint

asserting the ‘832 patent on December 3, 2014.” Pet. at 6; *see also* Ex. 2001. Therefore, a filing date after December 3, 2015 would render the petition time-barred under 35 U.S.C. § 315 (b).

The original Certificate of Service accompanying the petition (Ex. 2002) includes the following certification:

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105, I certify that I caused to be served a true and correct copy of the foregoing: **PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,475,832** by Federal Express Next Business Day Delivery on this day on the patent owner at the correspondence address of record for the subject patent as follows:

RB PHARMACEUTICALS LTD.  
c/o Hoffmann & Baron LLP  
6900 Jericho Turnpike  
Syosset, New York 11791

Dated: December 3, 2015

By: /Eleanor Yost/  
Eleanor Yost

The certification paragraph itself does not identify the date to which “this day” refers. The only date included on the Certificate of Service is “December 3, 2015” by the signature block. *See* Ex. 2002. Notably, the original Certificate of Service accompanying the petition (Ex. 2002) states only that “a true and correct copy” of the petition was “caused to be served,” omitting any reference to any of the exhibits relied upon in support of the petition. In the Notice of Filing Date

Accorded to Petition, the Board noted this defect, among others, explaining Petitioner's "[f]ailure to certify, in the 'Certificate of Service,' that all exhibits relied upon in the Petition were served on the Patent Owner." Paper No. 3, p. 1. The Notice further stated that this "defect can be corrected by uploading an amended Certificate of Service in PRPS." *Id.*

On December 17, 2015, Petitioner filed an "Amended Certificate of Service" (Ex. 2003) that includes the following certification:

**AMENDED CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105, I certify that I caused to be served a true and correct copy of the foregoing: **PETITION FOR INTER PARTES REVIEW OF U.S. PATENT NO. 8,475,832** and all exhibits relied upon by Federal Express Next Business Day Delivery on this day on the patent owner at the correspondence address of record for the subject patent as follows:

RB PHARMACEUTICALS LTD.  
c/o Hoffmann & Baron LLP  
6900 Jericho Turnpike  
Syosset, New York 11791

Dated: December 3, 2015

By: Eleanor Yost  
Eleanor Yost

As with the original Certificate of Service, the certification paragraph itself in the Amended Certificate of Service does not identify the date to which "this day" refers. Critically, the Amended Certificate of Service also includes "December 3, 2015" by the signature block. *See* Ex. 2003.

Both the original and Amended Certificates of Service list “Hoffmann & Baron LLP, 6900 Jericho Turnpike, Syosset, NY 11791” as the “correspondence address of record” to which the “Federal Express Next Business Day Delivery” was directed. *See* Exs. 2002 & 2003. As explained in the Declaration of Michael I. Chakansky, Esq. (Ex. 2005), boxes containing a copy of the petition, the original Certificate of Service, and exhibits were part of a three-piece shipment under “Master tracking number 775119028582.” *See* Ex. 2005, ¶¶ 3-4; Ex. 2004 (showing three FedEx Tracking reports for a “3 Piece shipment” under Master tracking number 775119028582). The “Ship date” for each of the three pieces is listed as “Fri **12/04/2015**.” Ex. 2004 (emphasis added). The “Travel History” for each piece includes an entry “Picked up Tendered at FedEx Office” at “3:02 am” on “**12/04/2015-Friday**” and an entry “Left FedEx origin facility at “11:19 pm” on “**12/04/2015-Friday**.” *Id.* (emphasis added). In the teleconference conducted on February 17, 2016, “Petitioner confirmed that it did not attempt service before 3 a.m. on December 4, 2015, when it brought boxes of documents to a Federal Express office for mailing.” Paper No. 8, p. 2.

### III. APPLICABLE LEGAL STANDARDS

Service of a petition and the exhibits thereto is both a statutory and regulatory requirement. First, 35 U.S.C. § 312(a)(1) mandates that a petition “may be considered only if” all of the statutory requirements are met, including

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