

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ALTAIRE PHARMACEUTICALS, INC.,  
Petitioner,

v.

PARAGON BIOTECK, INC.,  
Patent Owner.

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Case PGR2015-00011  
Patent 8,859,623

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**PATENT OWNER'S RESPONSE  
PURSUANT TO 37 C.F.R. § 42.220**

**TABLE OF CONTENTS**

	<u>Page</u>
I. STATEMENT OF PRECISE RELIEF REQUESTED .....	1
II. INTRODUCTION AND OVERVIEW OF ARGUMENT .....	1
III. BACKGROUND .....	4
A. The '623 patent claims cold storage of phenylephrine to maintain chiral purity .....	4
B. The USP method for assessing chiral purity of phenylephrine does not work.....	5
C. The business dispute between the Sawayas and Paragon.....	7
D. The Sawayas' complete control of Altaire and Sawaya Aquebogue.....	10
IV. CLAIM CONSTRUCTION .....	13
V. PETITIONER FAILED TO IDENTIFY ALL REAL PARTIES IN INTEREST .....	14
A. The declaration of Al Sawaya is not credible .....	16
B. The Sawayas are RPIs.....	20
C. Sawaya Aquebogue is an RPI .....	21
D. Correcting RPI would be futile .....	28
VI. THE PETITION IS SUPPORTED SOLELY BY ATTORNEY ARGUMENT.....	28
A. Al Sawaya is not an expert witness .....	29
B. Al Sawaya does not have personal knowledge of the tests and data submitted in support of the Petition .....	30
VII. PETITIONER'S TESTS AND DATA DO NOT MEET THE REQUIREMENTS OF 37 CFR § 42.65.....	31
A. Background regarding the requirement for tests and data under 37 C.F.R. § 42.65.....	32
B. The declaration of Al Sawaya does not satisfy the requirements for tests and data under 37 C.F.R. § 42.65 .....	34
1. The HPLC tests and data are unsupported.....	34
2. The optical rotation tests and data are unsupported .....	37

VIII. PETITIONER CANNOT ESTABLISH THAT ALTAIRE'S PRODUCT MEETS THE LIMITATIONS OF CLAIM 1 .....	38
A. The USP standard HPLC protocol used by Petitioner does not reliably detect chiral impurity and does not establish the chiral purity of Altaire's Product .....	38
1. Petitioner's methodology .....	38
2. Petitioner's HPLC evidence does not establish chiral purity of Altaire's Product .....	42
B. Petitioner's optical rotation evidence does not establish the chiral purity of Altaire's Product.....	43
1. The optical rotation tests compare Altaire's Product to a sample of unknown purity.....	43
2. The optical rotation tests proffered by Petitioner is incapable of establishing chiral purity of at least 95%.....	46
C. Petitioner does not establish the storage conditions of Altaire's Product .....	48
IX. PETITIONER HAS NOT DEMONSTRATED THAT THE CLAIMS WOULD HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE ART .....	53
X. CONCLUSION .....	54
XI. APPENDIX .....	55

## **I. STATEMENT OF PRECISE RELIEF REQUESTED**

Assad (“Al”) and Theresa Sawaya (as a marital couple, “the Sawayas”)—in the guise of a company they wholly own and control, Altaire Pharmaceuticals, Inc. (“Altaire”)<sup>1</sup>—filed a Petition for post-grant review of claims 1-13 of U.S. Patent No. 8,859,623 (“the ’623 patent,” Ex. 1001) owned by Paragon BioTeck, Inc. (“Paragon”). The Board issued a decision instituting trial (“Institution Decision,” Paper 14) on only one ground of challenge, which alleges that claims 1-13 of the ’623 patent are unpatentable as obvious over Altaire’s Product under 35 U.S.C. § 103.

Paragon requests that the Board now dismiss the sole ground of challenge remaining in this post-grant review, so as to confirm the patentability of claims 1-13 of the ’623 patent.

## **II. INTRODUCTION AND OVERVIEW OF ARGUMENT**

First, the Petition should be dismissed because the Sawayas cannot establish that they have complied with the requirements of 35 U.S.C. § 322(a)(2) and 37 C.F.R. § 42.8(b)(1) that a petition must identify all real parties-in-interest (“RPIs”). The Petition lists Altaire as the sole RPI. In instituting trial, the Board relied on the declaration testimony of Al Sawaya. Following the deposition of Al Sawaya, it is

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<sup>1</sup> Assad Sawaya goes by the name Al (Ex. 2034, 4:19-25); for clarity, this paper refers to him as Al Sawaya, which seems to be the name he prefers.

now apparent that, whether knowingly or not, Al Sawaya's declaration contains numerous falsehoods. The Petition was filed at the behest of the Sawayas. Sawaya Aquebogue, LLC ("Sawaya Aquebogue") and Altaire are each alter egos of the Sawayas, owned and controlled by the Sawayas. Sawaya Aquebogue is a sham company with no apparent legitimate purpose, which is now being used to attempt to shield assets, unjustly obtained by the Sawayas, from recovery by Paragon. Accordingly, the Petition was required to list the Sawayas and Sawaya Aquebogue as RPIs, but it did not. Amending the Petition would be futile, because the nine month statutory bar has passed, and so the Petition should be dismissed.

Second, the Petition is supported solely by attorney argument. The Sawayas' only declarant, Al Sawaya himself, is not qualified as an expert witness. Accordingly, his opinion testimony is entitled to no weight. Moreover, to the extent that Al Sawaya provided any non-opinion testimony, it is now apparent that his testimony is based on inadmissible hearsay rather than personal (that is, firsthand) knowledge, and is also entitled to no weight. In other words, the Petition and the unpatentability contentions it contains amount to nothing more than attorney argument. As the Petition is not supported by any evidentiary foundation, it should be dismissed.

Third, the Sawayas did not provide the experimental details both required by the Board's rules and necessary to evaluate the experimental data submitted with

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