

U.S. Patent No. 8,859,623

Declaration of Assad Sawaya in Support of Petitioner's Reply

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Altaire Pharmaceuticals, Inc.

Petitioner

v.

Paragon BioTeck, Inc.

Patent Owner

U.S. Patent No. 8,859,623

Issue Date: October 14, 2014

Entitled: METHODS AND COMPOSITIONS OF STABLE PHENYLEPHRINE
FORMULATIONS

Post-Grant Review No.: PGR2015-00011

DECLARATION OF ASSAD SAWAYA IN
SUPPORT OF PETITIONER'S REPLY

Declaration of Assad Sawaya in Support of Petitioner's Reply

I, Assad Sawaya, declare as follows:

1. I am President of Altaire Pharmaceutical, Inc. ("Altaire"). I am also General Manager of Sawaya Aquebogue, LLC ("Saw Aque"). I make this declaration based upon my personal knowledge of the facts stated herein.

2. Altaire is a corporation with its principal place of business located at 311 West Lane, Aquebogue, NY 11931. Altaire is incorporated under the laws of New York.

3. Altaire manufactures numerous pharmaceutical compositions and drugs. One such composition, phenylephrine hydrochloride ophthalmic solution, is the subject of U.S. Patent 8,859,623 ("the '623 patent"). Altaire has been manufacturing, selling and distributing phenylephrine hydrochloride ophthalmic solution for several years prior to the filing of the '623 patent.

4. Saw Aque is a limited liability company organized under the laws of New York. Saw Aque is a holding company. [REDACTED]

[REDACTED]

5. Saw Aque does not manufacture or sell any products related to the '623 patent. Nor is Saw Aque party to any agreement regarding the subject matter of the '623 patent. In addition, Saw Aque maintains no affiliate relationships with any entity that manufactures or sells products covered by the '623 patent.

6. Altaire and Saw Aque are separate and distinct entities having different ownership interests. Altaire and Saw Aque do not have a parent/subsidiary relationship. Altaire has no ownership interest in Saw Aque, and Saw Aque has no ownership interest in Altaire, either directly or indirectly. Altaire and Saw Aque are not under common control or even run by the same person, with each having different ownership interests and different controlling interests.

7. Altaire and Saw Aque maintain separate business records, pay separate taxes, and have completely different business objectives. While I have a leadership position in both entities, each entity has separate interests and goals, and I separately represent those interests and goals.

8. Altaire and Saw Aque, furthermore, are in different fields of business. Altaire is in the business of pharmaceutical research, development, manufacturing, supply and distribution. In contrast, Saw Aque is a holding company that holds real property [REDACTED]. Saw Aque does not make, sell, manufacture, supply, or distribute any pharmaceutical products.

9. Saw Aque does not have an interest in reviewing the '623 patent. Saw Aque does not have an ownership interest in any entity that could infringe the '623 patent. Saw Aque does not have the capabilities to manufacture or sell products that allegedly could be covered by the '623 patent.

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10. The sales by Altaire to Paragon are irrelevant to Saw Aque's business. Saw Aque does not receive consideration from Altaire as a result of its sales to Paragon of products. Saw Aque does not benefit from increased sales by Altaire. Saw Aque would obtain no financial benefit from the cancellation of the '623 patent.

11. Saw Aque's interests are not unified with Altaire's in this PGR proceeding. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Altaire alone is in control of this post grant review proceeding. Altaire alone funded and sought review of the '623 patent. Altaire alone intends to solely control the review proceeding without input from Saw Aque. Saw Aque did not direct, control, or fund the preparation or filing of the Petition.

13. Altaire and Saw Aque have a tenant – landlord relationship. Saw Aque leases certain property to Altaire. The lease agreement was negotiated and reflects arm length rates.

14. As I understand, Paragon filed a lawsuit alleging that Altaire and Saw Aque breached a contract agreement (“Agreement”) with Paragon. My understanding of the lawsuit is that the only allegations relate to misuse of

confidential information and breach of contract. There are no patent related claims.

15. The lawsuit's underlying Agreement is solely by and between Altaire and Paragon. Saw Aque is not a party to the Agreement. For example, Saw Aque has no obligations to either Altaire or Paragon under the Agreement, and was not a party to signing the Agreement.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 28th of September, 2015, at 311 West Lane, Aquebogue, NY, 11931.

By: 
Assad Sawaya