

Coalition for Affordable Drugs VI v. Celgene Corporation: Denying Motion for Sanctions IPR2015-01092

Article By:

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Takeaway: Evidence that a petition was filed for purely profit motivation and that the petitioner does not have a competitive interest in the challenged patents is not enough to meet the burden required to grant a motion for sanctions to dismiss the petitions.

In its [Decision](#), the Board denied Patent Owner's Motion for Sanctions. The Motion alleged that the Petitions represent an ongoing abuse of the *inter partes* review process that are driven entirely by a "profit motive" unrelated to the purpose of the AIA or a competitive interest in the validity of the challenged patents. Patent Owner requested dismissal of the Petitions on the basis that the reasons for seeking review are illegitimate.

The Board stated that Patent Owner, as the moving party, bears the burden of proof that it is entitled to the requested relief. The Board reviewed the Motion under a preponderance of the evidence standard.

Regarding Patent Owner's argument that the Petitions be dismissed because Petitioner seeks to profit from the Petitions, the Board stated that profit is at the heart of nearly every patent and nearly every *inter partes* review. Therefore, an economic motive itself does not raise abuse of process issues. The Board took no position on the merits of a short-selling investment strategy other than that it is legal and regulated.

Regarding Patent Owner's contention that Petitioner has no competitive interest in the patents they are challenging, the Board noted that the AIA allows any person who is not the owner of a patent to file a petition for *inter partes* review, as opposed to covered business method patents, which require a party to have been sued or charged with infringement of a patent. Therefore, Article III standing is not a requirement to appear before the PTO.

Regarding Patent Owner's contention that the Petitions are contrary to the AIA, which is to allow the parties to challenge a granted patent as an expeditious and less costly alternative to litigation, the Board noted that was not the only purpose of the AIA. The Board stated that the AIA was designed to encourage the filing of meritorious challenges in an effort to improve patent quality, and Patent Owner did not allege that Petitioner filed a non-meritorious patentability challenge.

***Coalition for Affordable Drugs VI, LLC v. Celgene Corporation*, IPR2015-01902; IPR2015-01096; IPR2015-01102; IPR2015-01103; IPR2015-01169**

Paper 19: Decision Denying Sanctions Motion

Dated: September 25, 2015

Patent Nos. 6,045,501; 6,315,720; 5,635,517

Before: Toni R. Scheiner, Michael P. Tierney, Michael W. Kim, Jacqueline Wright Bonilla, Grace Karaffa Oberman, and Tina E. Hulse

Written by: Tierney

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