

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS VI, LLC,
Petitioner,
v.
CELGENE CORPORATION,
Patent Owner.

Case IPR2015-01092 (Patent 6,045,501)
Case IPR2015-01096 (Patent 6,315,720)
Case IPR2015-01102 (Patent 6,315,720)
Case IPR2015-01103 (Patent 6,315,720)
Case IPR2015-01169 (Patent 5,635,517)¹

Before TONI R. SCHEINER, MICHAEL P. TIERNEY,
MICHAEL W. KIM, JACQUELINE WRIGHT BONILLA,
GRACE KARAFFA OBERMANN, and TINA E. HULSE,
Administrative Patent Judges.

TIERNEY, *Administrative Patent Judge.*

DECISION
Denying Sanctions Motion
37 C.F.R. § 42.12

¹ This Order addresses issues common to all identified cases. We exercise our discretion to issue one Order to be filed in each case. The parties are not authorized to use this style heading.

IPR2015-01092 (Patent 6,045,501)
IPR2015-01096 (Patent 6,315,720)
IPR2015-01102 (Patent 6,315,720)
IPR2015-01103 (Patent 6,315,720)
IPR2015-01169 (Patent 5,635,517)

Patent Owner filed Motions for Sanctions (“Motion,” Paper 11²) requesting dismissal of Petitioner’s Petitions in IPR2015-01092, -01096, -01102, -01103, and -01169. The Motion alleges that the Petitions represent an ongoing abuse of the *inter partes* review process that will be an unwarranted burden on the Board, and innovators like Patent Owner.

Motion 1. According to the Motion, the Petitions are driven entirely by an admitted “profit motive” unrelated to the purpose of the American Invents Act,³ and unrelated to a competitive interest in the validity of the challenged patents. *Id.* at 2. Patent Owner requests dismissal of the Petitions on the basis that, even if the asserted validity challenges are “legitimate,” Petitioner’s reasons for seeking review are “illegitimate.” *Id.* at 11 (quoting *Neumann v. Vidal*, 710 F.2d 856, 860 (D.C. Cir. 1983)). Petitioner opposes the Motion. Opposition, Paper 12. Patent Owner filed a Reply. Paper 16.

Patent Owner, as moving party, bears the burden of proof that it is entitled to the requested relief. 37 C.F.R. § 42.1(d). The default evidentiary standard for a motion is a preponderance of the evidence. 37 C.F.R. § 42.1(d). As the present Motion fails under the preponderance standard, we need not address whether a higher evidentiary standard applies.

² Citations to papers and exhibits refer to those filed in IPR2015-01092. Similar papers and exhibits were filed in each of the other cases.

³ Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”)

IPR2015-01092 (Patent 6,045,501)
IPR2015-01096 (Patent 6,315,720)
IPR2015-01102 (Patent 6,315,720)
IPR2015-01103 (Patent 6,315,720)
IPR2015-01169 (Patent 5,635,517)

Profit Motive

Patent Owner contends that Petitioner's purported altruistic motive of lowering drug prices for consumers is a pretext. Motion 5–6. Patent Owner states that Petitioner seeks to profit from its Petitions for *inter partes* review. *Id.* at 5–7. Patent Owner contends that if the Board permits this strategy to continue, it will be inundated with similar petitions, and no public company that relies on patents will be safe from unnecessary petitions from for-profit organizations misusing *inter partes* reviews as investment strategies. *Id.* at 7.

Profit is at the heart of nearly every patent and nearly every *inter partes* review. As such, an economic motive for challenging a patent claim does not itself raise abuse of process issues. We take no position on the merits of short-selling as an investment strategy other than it is legal, and regulated.

Lack of Competitive Interest

Patent Owner contends that Petitioner has no competitive interest in the patents they challenge or the technology covered by the patents. Motion 6. Patent Owner states that the motivation for profit, combined with a lack of a competitive interest, is contrary to the America Invents Act's purpose and represents an improper use of the proceeding. *Id.* at 13.

The Leahy-Smith America Invents Act allows a person who is not the owner of a patent to file a petition with the Office to institute an *inter partes* review of the patent. 35 U.S.C. § 311. This is in contrast to covered

IPR2015-01092 (Patent 6,045,501)
IPR2015-01096 (Patent 6,315,720)
IPR2015-01102 (Patent 6,315,720)
IPR2015-01103 (Patent 6,315,720)
IPR2015-01169 (Patent 5,635,517)

business method reviews, which require a party or privy to have been sued or charged with infringement of the patent. AIA, § 18(a)(1)(B).

Accordingly, consistent with the proposition that Article III standing is not a requirement to appear before this administrative agency, we hold that Congress did not limit *inter partes* reviews to parties having a specific competitive interest in the technology covered by the patents. *See Sierra Club v. E.P.A.*, 292 F.3d 895, 899 (D.C. Cir. 2002) (stating that an administrative agency is not subject to Article III of the Constitution of the United States, so a petitioner would have no need to establish standing to participate in proceedings before the agency); *see also Consumer Watchdog v. Wis. Alumni Res. Found.*, 753 F.3d 1258, 1261 (Fed. Cir. 2014) (citing *Sierra Club*).

Purpose of America Invents Act

Patent Owner states that the Petitions in these cases are contrary to the America Invents Act, as Congress intended *inter partes* reviews to allow parties to challenge a granted patent as an expeditious and less costly alternative to litigation. Motion 7. The purpose of the AIA was not limited to just providing a less costly alternative to litigation. Rather, the AIA sought to establish a more efficient and streamlined patent system that improved patent quality, while at the same time limiting unnecessary and counterproductive litigation costs. The AIA was designed to encourage the filing of meritorious patentability challenges, by any person who is not the patent owner, in an effort to further improve patent quality. H.R. Rep. No.

IPR2015-01092 (Patent 6,045,501)
IPR2015-01096 (Patent 6,315,720)
IPR2015-01102 (Patent 6,315,720)
IPR2015-01103 (Patent 6,315,720)
IPR2015-01169 (Patent 5,635,517)

112-98, pt. 1, at 85 (2011). In the Motion, Patent Owner does not allege that Petitioner filed a non-meritorious patentability challenge. Motion 10–12.

III. Order

In consideration of the foregoing, it is hereby

ORDERED that Patent Owner’s Motions for Sanctions are *denied*.

PETITIONER:

Sarah Spires
1092CFAD6@skiermontpuckett.com

Parvathi Kota
1092CFAD6@skiermontpuckett.com

PATENT OWNER:

Francis Cerrito
nickcerrito@quinnemanuel.com

Anthony Insogna
aminsogna@jonesday.com

lb