

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
PATENT TRIAL AND APPEAL BOARD

BOSTON SCIENTIFIC SCIMED, INCORPORATED
and ABBOTT LABORATORIES,
Requesters #1 & 2

v.

CORDIS CORPORATION and WYETH
Patent Owners

Appeal No. 2014-008135
Merged Reexamination 95/000,542 & 95/000,552
Patent 7,591,844
Technology Center 3900

DECISION ON PETITIONS

Patent Owner, Cordis Corporation, requests permission to cross-examine adverse expert witnesses whose declaration testimony has been entered into the record of merged *Inter Partes* Reexaminations 95/000,542 & 95/000,552. (Petition). This is a decision dismissing "PATENT OWNER'S PETITION FOR THE CHIEF ADMINISTRATIVE PATENT JUDGE'S EXERCISE OF STATUTORY AUTHORITY," filed on January 15, 2015; dismissing "REQUESTER'S OPPOSITION TO PATENT OWNER'S PETITION FOR THE CHIEF ADMINISTRATIVE PATENT JUDGE'S EXERCISE OF PURPORTED STATUTORY AUTHORITY," filed on January 20, 2015, (Opposition); and

Appeal No. 2014-008135
Merged Reexamination 95/000,542 & 95/000,552
Patent 7,591,844

dismissing “REQUESTER ABBOTT’S PETITION TO RESPOND TO PATENT OWNER CORDIS’S JANUARY 15, 2015 PETITIONS FOR THE CHIEF ADMINISTRATIVE PATENT JUDGE’S EXERCISE OF STATUTORY AUTHORITY,” filed on January 22, 2015 (3PR petition). The petition fee of \$1,940 in accordance with 37 C.F.R. § 1.20(c)(6) was charged to Patent Owner’s deposit account on January 16, 2015. The petition fees of \$400 were charged to Requester’s credit card on January 20, 2015, and January 23, 2015, respectively.

FINDINGS

1. On June 12, 2013, Patent Owner filed a petition entitled “PATENT OWNER’S SUPPLEMENTAL SUBMISSION IN SUPPORT OF PETITION FOR DIRECTOR’S EXERCISE OF STATUTORY AUTHORITY.”
2. The appeal was docketed at the Board on August 5, 2014.
3. On December 4, 2014, a “Decision Denying Petition” was mailed by the Commissioner for Patents, denying the Patent Owner’s petition of June 12, 2013.
4. Patent Owner filed the present petition on January 15, 2015.
5. Requester, Abbott Laboratories, filed an opposition to the petition on January 20, 2014, and a petition for authorization to file an opposition on January 22, 2015.
6. A Decision on the appeal was rendered on February 27, 2015, affirming the Examiner’s rejections of the claims.

Appeal No. 2014-008135
Merged Reexamination 95/000,542 & 95/000,552
Patent 7,591,844

DISCUSSION

In the present petition, Patent Owner requests permission to cross-examine adverse expert witnesses whose declaration testimony has been entered into the record of merged *Inter Partes* Reexaminations 95/000,542 & 95/000,552. In its opposition, Requester, Abbott Laboratories opposes the petition, and appears to seek authorization to oppose the petition, after the filing of the opposition.

RELEVANT AUTHORITY

35 U.S.C. § 314(c) (pre-AIA) provides:

SPECIAL DISPATCH.— Unless otherwise provided by the Director for good cause, all inter partes reexamination proceedings under this section, including any appeal to the Patent Trial and Appeal Board, shall be conducted with special dispatch within the Office.

37 C.F.R. § 41.3 provides:

- (a) Deciding official. Petitions must be addressed to the Chief Administrative Patent Judge. A panel or an administrative patent judge may certify a question of policy to the Chief Administrative Patent Judge for decision. The Chief Administrative Patent Judge may delegate authority to decide petitions.
- (b) Scope. This section covers petitions on matters pending before the Board (§§ 41.35, 41.64, 41.103, and 41.205); otherwise, see §§ 1.181 to 1.183 of this title. The following matters are not subject to petition:
- (1) Issues committed by statute to a panel, and
 - (2) In pending contested cases, procedural issues. See § 41.121(a)(3) and § 41.125(c).
- (c) Petition fee. The fee set in § 41.20(a) must accompany any petition under this section except no fee is required for a petition under this section seeking supervisory review.

Appeal No. 2014-008135
Merged Reexamination 95/000,542 & 95/000,552
Patent 7,591,844

(d) Effect on proceeding. The filing of a petition does not stay the time for any other action in a Board proceeding.

(e) Time for action.

(1) Except as otherwise provided in this part or as the Board may authorize in writing, a party may:

(i) File the petition within 14 days from the date of the action from which the party is requesting relief, and

(ii) File any request for reconsideration of a petition decision within 14 days of the decision on petition or such other time as the Board may set.

(2) A party may not file an opposition or a reply to a petition without Board authorization.

37 C.F.R. § 1.939(a) provides:

If an unauthorized paper is filed by any party at any time during the inter partes reexamination proceeding it will not be considered and may be returned.

ANALYSIS

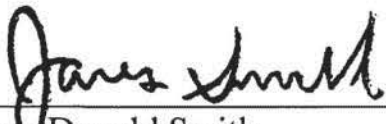
In the present petition, Patent Owner requests permission to cross-examine adverse expert witnesses whose declaration testimony has been entered into the record of merged *Inter Partes* Reexaminations 95/000,542 & 95/000,552. Petition 1. In a “Decision Denying Petition” mailed on December 4, 2014, the Commissioner for Patents issued a decision on this matter, which concluded with the statement, “[t]his decision constitutes the Office’s final decision on these issues.” Petition 4. Because Patent Owner already has received a final agency decision on this matter, the present petition is **dismissed** as an improper submission, will not be

Appeal No. 2014-008135
Merged Reexamination 95/000,542 & 95/000,552
Patent 7,591,844

considered, and will be closed from the Image File Wrapper (IFW) system. With regard to the opposition, Requester did not seek authorization pursuant to 37 C.F.R. § 41.3(e)(2), prior to filing the opposition. Therefore, the opposition is **dismissed** as an unauthorized submission, and will be closed from the Image File Wrapper (IFW) system.

CONCLUSION

Patent Owner's Petition is DISMISSED; Requester's Opposition and Petition requesting authorization to file the opposition are DISMISSED; and all three documents will be closed from the IFW system.



James Donald Smith
Chief Administrative Patent Judge