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Skilled in the Art: Funder Loses Bid to Knock Out Pharma Patent

By Scott Graham

Ever wonder what it might look like if non-practicing entities were forced to publicly disclose their financial backing in litigation?

We got a taste this week in the IPR of *Neptune Generics LLC v. Corcept Therapeutics Inc*. Neptune Generics doesn't appear to manufacture or distribute generic drugs. Rather, it's a creation of litigation funder Burford Capital whose primary purpose appears to be bringing IPRs against branded pharma companies. It seems not unlike Kyle Bass' Coalition for Affordable Drugs a few years back.

But Burford is a publicly traded company and to its credit, Neptune was upfront with the PTAB about its corporate structure. Here's how it explained it:

Neptune Generics, LLC; Niagara FundingCo, LLC; GKC Partners II, LP; GKC General Partner II, LP; Burford Capital Ireland DAC; GKC PII Holdings, LLC; Burford Capital Investment Management LLC; Burford Capital Holdings (UK) Limited; and Burford Capital Limited are the real parties in interest (collectively, "RPI"). Neptune Generics, LLC, a New York limited liability company, is 100% owned by Niagara FundingCo, LLC, a New York limited liability company, which itself is 100% owned by GKC Partners II, LP, a Delaware limited partnership.

Neptune, represented by Massey & Gail was trying to invalidate a Corcept patent on a drug called Korlym. It's based on the medicine mifepristone, which historically is used to terminate pregnancies. At a blood serum level of 1300 nanograms per milliliter, mifepristone also helps alleviate Cushing's Disease, which is characterized by anxiety and severe weight gain.

Neptune argued that the patent merely sets an optimal dosage for treating Cushing's Disease, which would have been obvious for a POSA to find. Not so, argued Corcept's **Latham & Watkins** attorneys. The same dose of mifepristone can produce blood serum levels that vary by as much as 800% from individual to individual.

The patent discloses a more accurate method of measuring it, and directs that the dose be adjusted each day for seven days until reaching that

1300 ng/ml level to treat Cushing's, Latham argued.

The PTAB agreed in a final written decision issued Monday. "The testimony of Petitioner's own expert calls into question whether a POSA could indeed have optimized serum levels by adjusting dosing (and whether a POSA would have seen value in doing so)," Administrative Patent Judge David Cotta wrote for the PTAB.

Latham's team featured partners **Bob Steinberg** and **David Frazier** and associate **Michelle Ernst**.

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