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## Inter Partes Reviews the New Investment Strategy?

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# INTER PARTES REVIEWS THE NEW INVESTMENT STRATEGY?

BY [MANAGING EDITOR](#) / ON OCTOBER 6, 2015

Texas hedge fund manager and founder of Hayman Capital Management, J. Kyle Bass, has riled up the pharmaceutical industry. Bass formed the Coalition for Affordable Drugs, an organization that is the lead petitioner in several challenges to Orange Book-listed patents—a list of approved drug products with therapeutic equivalence evaluations (i.e. generic drugs)—which he believes have little value other than to drive up the prices of prescription drugs. Bass and the Coalition filed 36 Inter Partes Review (IPR) petitions by challenging patents and betting against the company's stocks. The patent reviews were created by the 2011 America Invents Act as a quick and easy way for anyone to challenge certain patents outside of the federal court system. As expected, this has drawn complaints from pharmaceutical companies, some calling Bass a "patent troll." As a result, Celgene, a pharmaceutical giant, filed for sanctions claiming Bass is led by economic motives and using the process as a form of extortion. If allowed to move forward, the pharmaceutical companies argued, for-profit groups like Bass' would use patent reviews as an investment strategy or demand payment in return for dropping challenges.

However, in a big blow to the pharmaceutical industry, a tribunal of the U.S. Patent and Trademark Office (USPTO) denied the sanctions stating that an economic motive is not "an abuse of process." The Patent Trial and Appeal Board held:

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.

As a result, Bass can continue his crusade challenging patents. Although Bass has admitted he does have financial interests as a motive, his strategy also functions to keep pharmaceutical companies from extending their patent monopolies to maintain high drug prices. As a result, his methods can save consumers significant amounts of money in the long run. This is especially important with the rise of pharmaceutical drug prices and most recently, the outrageous price surge of the anti-infective drug, Daraprim, from \$13.50 per pill to \$750 by Turing Pharmaceuticals and its Chief Executive Officer, Martin Shkreli. Democratic presidential candidate Hillary Clinton called on Shkreli to lower the costs and began airing a new ad in Iowa and New Hampshire to "crack down" on abuses by pharmaceutical companies.

Consequently, the USPTO has proposed revisions to the practice and procedure rules that apply to IPR challenges. In its filing with the patent office, Acorda Therapeutics argued that Congress never intended the IPRs to be used by hedge funds to affect stock prices.

While Bass continues his work, he still has an uphill battle ahead of him as the board declined to initiate a formal review for three of his patent challenges, including his challenge to Biogen Inc.'s multiple sclerosis pill Tecfidera and Acorda Therapeutics Inc.'s drug Ampyra.

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