

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANOFI-AVENTIS U.S. LLC AND
REGENERON PHARMACEUTICALS, INC.,
Petitioners

v.

GENENTECH, INC. AND CITY OF HOPE,
Patent Owners

Case IPR2015-01624
Patent 6,331,415

**PETITIONERS' OPPOSITION TO MOTION FOR JOINDER FILED BY
MYLAN PHARMACEUTICALS INC. IN IPR2016-00710**

Petitioners Sanofi-Aventis U.S. LLC and Regeneron Pharmaceuticals, Inc.

submit this opposition to the motion for joinder filed by Mylan Pharmaceuticals Inc. in IPR2016-00710 (the "Mylan IPR," Paper No. 3). Mylan's motion requests joinder of the Mylan IPR with the instant *inter partes* review filed by Sanofi and Regeneron, IPR2015-01624 (the "Sanofi IPR"). Both the Mylan IPR and the Sanofi IPR relate to the same patent, U.S. Patent No. 6,331,415, which is owned by Genentech, Inc. and City of Hope ("Patent Owners"). Sanofi and Regeneron understand that Patent Owners intend to oppose Mylan's joinder motion. Because joinder would also cause prejudice to Sanofi and Regeneron and to their ability to prosecute or settle the Sanofi IPR as they see fit without interference from Mylan or having to seek Mylan's cooperation on so-called "consolidated filings and discovery," Sanofi and Regeneron respectfully request that the Board deny the motion.

In its motion, Mylan informs the Board that it will "agree to incorporate its filings with those of Sanofi and Regeneron into a consolidated filing in the Sanofi IPR.... Sanofi, Regeneron, and Mylan will be jointly responsible for the consolidated filings." (Motion for Joinder, at 6.) Moreover, Mylan states that "[c]onsolidated discovery is also appropriate given that Mylan, Sanofi, and Regeneron are using the same expert declaration in the two proceedings. Mylan, Sanofi, and Regeneron will designate an attorney to conduct the cross-examination

of any given witness produced by Genentech and City of Hope, and the redirect of any given witness produced by Mylan, Sanofi, and Regeneron...." (*Id.* at 6-7.)

Sanofi and Regeneron oppose Mylan's motion because joinder on these terms would prejudice Sanofi and Regeneron by unilaterally requiring them to cooperate with Mylan—a cooperation that Mylan presumes in its motion without having ever received the concurrence of Sanofi and Regeneron. Sanofi and Regeneron should not be forced to accommodate the interests of a third party in determining the prosecution strategy of their own *inter partes* review and the potential for settlement. However, Mylan's "conditions" for joining the Sanofi IPR require exactly that: Mylan has proposed "consolidated" (not unilateral) filings, which would require that Sanofi, Regeneron *and Mylan* be "jointly responsible" for any filings. Similarly, Mylan inserts itself without agreement from Sanofi and Regeneron into decision making regarding discovery: *Mylan, Sanofi, and Regeneron* "will designate an attorney to conduct the cross-examination of any given witness produced by Genentech and City of Hope, and the redirect of any given witness produced by Mylan, Sanofi, and Regeneron...."

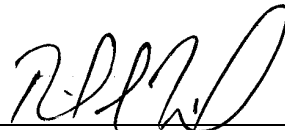
But Sanofi and Regeneron alone will determine the content of their remaining filings in the Sanofi IPR. Likewise, Sanofi and Regeneron will choose who conducts the cross-examination of the witnesses offered by Patent Owners in the Sanofi IPR. And Sanofi and Regeneron—not Mylan—will designate the

attorney who will take the redirect testimony of their own expert witness (Dr. Jefferson Foote). To be clear, Sanofi and Regeneron will not cede to Mylan any control over the conduct or strategy of the Sanofi IPR, Mylan's stated conditions for joinder notwithstanding. Under similar facts, the Board has denied a second-filer's joinder motion premised on assumed (but not actual) consent from the original petitioner on cooperative filings and discovery. *See* Teva Pharmaceuticals USA Inc. v. ViiV Healthcare Co., IPR2015-00550, Paper No. 11, at 5-6; Samsung Electronics Co. v. Arendi S.A.R.L., IPR2014-01142, Paper No. 11, at 4-5.

Finally, consideration of joinder will necessarily slow the proceedings in the Sanofi IPR as the Board assesses Mylan's request for joinder and the oppositions to it. The Sanofi IPR is now in the Patent Owners' discovery period, with the deposition of Dr. Foote already scheduled for April 21, 2016—before Mylan's reply papers would be due and before the Board will likely rule on the joinder motion.

For these reasons, Sanofi and Regeneron request that the Board deny Mylan's motion for joinder.

Respectfully submitted,



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