

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

AMERIGEN PHARMACEUTICALS LIMITED and  
ARGENTUM PHARMACEUTICALS LLC,  
Petitioners,

v.

JANSSEN ONCOLOGY, INC.,  
Patent Owner.

---

Case No. IPR2016-00286<sup>1</sup>  
U.S. Patent No. 8,822,438 B2

---

**PATENT OWNER'S MOTION  
TO FILE EXHIBITS**

---

<sup>1</sup> Case No. IPR2016-01317 has been joined with this proceeding.

Patent Owner respectfully moves to file three exhibits that were mistakenly omitted from Patent Owner's October 4, 2016 filing. These three exhibits, Exhibits 2033, 2034, and 2035, had previously been provided to Petitioners during the deposition of their own expert and were specifically relied on by one of Patent Owner's experts in his declaration. The Board authorized this filing on November 29. *See* Paper 48.

**A. Background**

ZYTIGA® is the commercial embodiment of the challenged claims. Paper 33 at 1, 60-65. Exhibits 2033, 2034, and 2035 are copies of press releases reflecting annual U.S. net sales of ZYTIGA® for the years 2013-2015. *See* Ex. 2111 at 28:17-35:23. During the September 1, 2016 deposition of Petitioners' expert, Dr. DeForest McDuff, Patent Owner introduced and marked Exhibits 2033, 2034, and 2035, and provided courtesy copies to Petitioners' counsel. *See id.*

Patent Owner's commercial success expert, Dr. Christopher A. Vellturo, expressly relied on Exhibits 2033, 2034, and 2035 in preparing his declaration. Ex. 2044 at App. A. Dr. Vellturo specifically relies on these exhibits when showing the annual net sales of ZYTIGA®, Ex. 2044 at App. B (citing Exs. 2033-35), which he then discusses in the body of his declaration, *id.* at ¶¶41, 51. Dr. Vellturo also relies on portions of Petitioners' expert Dr. McDuff's testimony discussing these exhibits. *Id.* at ¶37 (citing Ex. 2111 at 30:23-31:6).

Patent Owner's Response relies extensively on Dr. Vellturo's report to show the commercial success of ZYTIGA®. *See, e.g.*, Paper 33 at 12, 60, 64-65.

Clearly, Patent Owner had every intent to submit Exhibits 2033, 2034, and 2035 as part of its Response, but they were inadvertently omitted from Patent Owner's updated exhibit list and neither filed nor served. *See* Paper 27.

Soon after Patent Owner's Response was filed, Petitioners themselves recognized that the exhibits were missing and that an error had been made. On October 18, two weeks after the original filing, Petitioners contacted Patent Owner inquiring about the exhibits. *See* Oct. 18, 2016 Olson Email (Ex. 2121). Patent Owner promptly served copies on Petitioners that same day and requested their consent in filing this motion. Ex. 2121. On November 11, Petitioners informed Patent Owner via telephone that they would likely oppose the motion.

## **B. Analysis**

Patent Owner respectfully requests leave to file Exhibits 2033, 2034, and 2035 because (1) Patent Owner's mistake was inadvertent and clerical, (2) Petitioners will not be prejudiced, and (3) it is in the public interest to maintain a complete and understandable file history for public notice purposes.

First, Patent Owner's mistake was inadvertent and clerical. Every other Patent Owner exhibit relied on in Dr. Vellturo's declaration was included on the exhibit list and filed and served on Petitioners. *Compare* Ex. 2044 at App. A. *with*

Paper 27. Petitioners themselves recognized that an obvious error had been made when they quickly contacted Patent Owner about the omission of the exhibits.

Second, correcting Patent Owner's mistake in no way prejudices Petitioners. Courtesy copies of each of the three exhibits, marked with the same exhibit numbers referenced in the Velluro Declaration, had been given to Petitioners during Dr. McDuff's September 1, 2016 deposition, over a month before Patent Owner's Response was filed. The Velluro Declaration clearly identified the exhibits as press releases reflecting ZYTIGA® sales. There could have been no reasonable doubt as to the identification of the inadvertently missing exhibits and, moreover, Patent Owner provided additional copies of the exhibits to Petitioners two weeks after the Response was filed.

Third, Patent Owner respectfully submits that, even though the Rules provide for correction of clerical mistakes in a petition (37 C.F.R. § 42.104(c)) but not specifically in other papers, the Board has authority under 37 C.F.R. § 42.5(a) to grant the requested relief. *See, e.g., CaptionCall, L.L.C. v. Ultratec, Inc.*, IPR2015-01889, Paper No. 54 at 3 (August 1, 2016) (allowing changes to Patent Owner Response). Since the error was inadvertent and there is no prejudice to Petitioner, the public interest would be served by granting the motion so that a full public record is maintained for notice purposes.

For these reasons, Patent Owner's motion should be granted.

IPR2016-00286  
US Patent 8,822,438

Dated: December 2, 2016

Respectfully Submitted,

By: */Dianne B. Elderkin/*  
Dianne B. Elderkin (Reg. No. 28,598)  
delderkin@akingump.com  
Barbara L. Mullin (Reg. No. 38,250)  
bmullin@akingump.com  
Ruben H. Munoz (Reg. No. 66,998)  
rmunoz@akingump.com  
AKIN GUMP STRAUSS HAUER &  
FELD LLP  
Two Commerce Square  
2001 Market Street, Suite 4100  
Philadelphia, PA 19103  
Tel: (215) 965-1200  
Fax: (215) 965-1210

David T. Pritikin (*pro hac vice*)  
Bindu Donovan (*pro hac vice*)  
S. Isaac Olson (*pro hac vice*)  
Alyssa B. Monsen (*pro hac vice*)  
SIDLEY AUSTIN LLP  
787 Seventh Avenue  
New York, NY 10019  
Tel.: (212) 839-5300  
Fax: (212) 839-5599  
ZytigaIPRTeam@sidley.com  
*Counsel for Patent Owner*

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.