

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS INC.,  
Petitioner,

v.

GENENTECH, INC. AND CITY OF HOPE,  
Patent Owners.

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Case IPR2016-00710  
Patent 6,331,415

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**PETITIONER'S REPLY IN SUPPORT OF MOTION FOR JOINDER**

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Pursuant to 37 C.F.R. § 42.23(a), Petitioner Mylan Pharmaceuticals Inc. (“Mylan”) hereby submits this Reply to Patent Owners’ Opposition to Motion for Joinder (IPR2016-00710, Paper No. 8 (P.T.A.B. Apr. 4, 2016) (“PO Opp’n”)) and Petitioners’ Opposition to Motion for Joinder Filed by Mylan Pharmaceuticals Inc. in IPR2016-00710 (IPR2015-01624, Paper No. 25 (P.T.A.B. Apr. 4, 2016) (“Sanofi Opp’n”)).

## **I. INTRODUCTION**

Mylan’s Petition contains the exact grounds on which the Sanofi IPR was instituted. For this reason alone, joinder is warranted. Moreover, the procedural concessions set forth in Mylan’s Motion for Joinder, and reaffirmed here, ensure that there will be no prejudice to Sanofi or Patent Owners should joinder be granted. Further, these procedural concessions—including Mylan’s additional concession (as proposed by Patent Owners) that Dr. Foote’s deposition testimony be entered into the record and cited in the parties’ respective filings irrespective of termination of the Sanofi IPR—eliminate any prejudice to Sanofi or Patent Owners and minimize the burden on the Board. For the reasons set forth below and in its Motion, Mylan respectfully requests that joinder be granted.

## **II. SUBSTANTIVE SIMILARITIES WEIGH HEAVILY IN FAVOR OF JOINDER**

Genentech and Sanofi take no issue with joinder of the Mylan IPR on substantive grounds—nor could they—given the utter lack of substantive

differences between the Mylan IPR and the grounds of unpatentability the Board instituted in the Sanofi IPR. Indeed, the Mylan IPR seeks institution of *inter partes* review on the exact grounds instituted in the Sanofi IPR. Considering “the policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding,” the Board should exercise its discretion to grant joinder here. *Dell, Inc. v. Network-1 Sec. Solutions, Inc.*, IPR2013-00385, Paper No. 17, at 10 (P.T.A.B. July 29, 2013).

### **III. JOINDER WILL NOT PREJUDICE SANOFI**

#### **A. No Interference from Mylan**

Sanofi asserts that “interference from Mylan” and “having to seek Mylan’s cooperation” on consolidated filings and discovery will cause prejudice to Sanofi. (Sanofi Opp’n, at 1). Not so. As stated in Mylan’s Motion, Mylan agrees to significant procedural concessions should joinder be granted. (Petitioner’s Motion for Joinder, IPR2016-00710, Paper No. 3, at 5-6, 8-9 (P.T.A.B. Mar. 3, 2016) (“Mot.”)).

To be clear, Mylan has no (and never had any) intention to “interfere” with any of Sanofi’s filings or discovery. Instead, Mylan seeks to minimize any burden on the Board by coordinating on filings and discovery should joinder be granted, while at the same time seeking no additional pages or deposition time. Further, Sanofi’s counsel has been made aware that Mylan is willing to consider any reasonable procedural concessions in order to facilitate joinder and cooperation of

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