

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WOCKHARDT BIO AG,  
Petitioner,

v.

ASTRAZENECA AB,  
Patent Owner.

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Case IPR2016-01029  
Patent No. RE44,186

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**PATENT OWNER'S OPPOSITION TO JOINDER**

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## I. Introduction

Wockhardt Bio AG's ("Wockhardt") petition for *inter partes* review ("IPR") and its corresponding motion to join the instituted *Mylan Pharms. Inc., v. AstraZeneca AB* IPR (IPR2015-01340; "Mylan IPR") should be denied because its participation will unnecessarily complicate, disrupt, and delay the Mylan IPR, and its petition is otherwise statutorily time-barred.

This is not a case where Wockhardt and Mylan are working together and Wockhardt requests joinder to be in the game but sit on the sidelines. Wockhardt and Mylan are direct competitors. They have no agreement to cooperate, no agreement to consolidate filings, no agreement to use the same expert, and no agreement to apportion hearing time. Wockhardt acknowledges the parties' potentially divergent interests when it proposes to *add briefing* when "Wockhardt disagrees" with Mylan, to potentially *introduce a new expert* if "Mylan settles with AstraZeneca and contractually bind[s] [its] experts from continuing in the IPR with Wockhardt," and to *take a "primary" role* if "Mylan willingly seeks more prominent participation from Wockhardt's counsel." Mot. at 11-12. These proposals introduce complexity and expense to briefing, discovery, and hearings, threaten to delay the existing trial schedule, and will likely increase the burden on the Board.

In addition, denying Wockhardt's motion will not "burden[] [the Board] by having needlessly to adjudicate and preside over two proceedings" (Mot. at 9). *See also id.* at 1. Absent joinder, Wockhardt's petition is time-barred. 35 U.S.C. § 315(b). Wockhardt has no independent right to file an IPR—having been sued for infringing AstraZeneca's RE 44,186 patent ("the '186 patent") nearly two years ago and choosing to wait until now to file a petition. Under the statute, there is no scenario in which the Board will be burdened with *two* proceedings.

## II. Background

On May 28, 2014, AstraZeneca served Wockhardt with a Complaint for infringement of the '186 patent based on Wockhardt's submission of an ANDA to market its generic version of AstraZeneca's pharmaceutical product ONGLYZA<sup>®</sup>. **Ex. 2001** at 4, D.I. 1 (Complaint entered May 23, 2014), D.I. 7 (Wockhardt served on May 28, 2014). The case is consolidated with five defendants, including both Wockhardt and Mylan. **Ex. 2002** at 15 (Remark entered Oct. 8, 2014). Trial is set for September 19, 2016, in Delaware District Court. **Ex. 2002** at 15 (Order entered Oct. 20, 2014).

Mylan filed a petition for IPR of the same '186 patent at issue in the district court action. *Mylan Pharms.*, IPR2015-01340, Paper 3 (June 4, 2015). The Board initially denied institution but later granted Mylan's request for rehearing and instituted trial on four grounds challenging certain claims of the '186 patent.

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