

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., TEVA PHARMACEUTICALS USA,
INC., and AKORN INC.,¹

Petitioners

v.

ALLERGAN, INC.,

Patent Owner

Case IPR2016-01127 (8,685,930 B2)

Case IPR2016-01128 (8,629,111 B2)

Case IPR2016-01129 (8,642,556 B2)

Case IPR2016-01130 (8,633,162 B2)

Case IPR2016-01131 (8,648,048 B2)

Case IPR2016-01132 (9,248,191 B2)

**BRIEF OF THE ASSOCIATION FOR ACCESSIBLE MEDICINES AS
AMICUS CURIAE IN SUPPORT OF PETITIONERS**

Cynthia Lambert Hardman
Registration No. 53,179
Goodwin Procter LLP
The New York Times
Building
620 Eighth Avenue
New York, NY 10018-1405
chardman@goodwinlaw.com
Tel: 212-813-8800

William M. Jay
Jaime A. Santos
Goodwin Procter LLP
901 New York Ave.,
N.W.
Washington, DC 20001
Tel: 202-346-4000

Jeffrey K. Francer
Rachel L. Sher
Association for
Accessible Medicines
601 New Jersey Ave.,
N.W., Suite 850
Washington, DC 20001
Tel: 202-249-7100

¹ Cases IPR2017-00576 and IPR2017-00594, IPR2017-00578 and IPR2017-00596, IPR2017-00579 and IPR2017-00598, IPR2017-00583 and IPR2017-00599, IPR2017-00585 and IPR2017-00600, and IPR2017-00586 and IPR2017-00601 have respectively been joined with the captioned proceedings.

TABLE OF CONTENTS

	Page
I. INTEREST OF AMICUS CURIAE.....	1
II. INTRODUCTION	2
III. ARGUMENT.....	3
A. Tribal Immunity Does Not Block The Board From Considering The Validity Of An Issued Patent.	3
1. IPRs Are Administrative Proceedings Instituted By A Federal Agency, Not Judicial Disputes Between Private Parties.	3
2. Instituted IPRs Are <i>In Rem</i> Proceedings, And The Transfer Of The Subject Patents To A Tribe Does Not Defeat <i>In Rem</i> Jurisdiction.....	6
B. Tribal Immunity Does Not Block The Board From Completing Instituted IPRs When A Patent Owner Transfers Its Patents To Avoid An Adverse Decision.	11
IV. CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Allergan, Inc. v. Teva Pharm. USA, Inc.</i> , No. 15-cv-1455-WCB, 2017 WL 4619790 (E.D. Tex. Oct.16, 2017)	15
<i>Anderson & Middleton Lumber Co. v. Quinault Indian Nation</i> , 929 P.2d 379 (Wash. 1996)	7
<i>Cass Cnty. Joint Water Res. Dist. v. 1.43 Acres of Land</i> , 643 N.W.2d 685 (N.D. 2002)	8, 9
<i>Cloverleaf Standardbred Owners Ass’n, Inc. v. Nat’l Bank of Wash.</i> , 699 F.2d 1274 (D.C. Cir. 1983).....	12
<i>Consumer Watchdog v. Wis. Alumni Research Found.</i> , 753 F.3d 1258 (Fed. Cir. 2014)	4
<i>Cnty. of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation</i> , 502 U.S. 251 (1992).....	9
<i>Covidien LP v. Univ. of Fla. Research Found. Inc.</i> , IPR2016-01274, Paper 21(P.T.A.B. Jan. 25, 2017)	6, 10-11
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 136 S. Ct. 2131 (2016).....	2, 4, 5, 10, 11
<i>Fed. Mar. Comm’n v. S.C. State Ports Auth.</i> , 535 U.S. 743 (2002).....	2, 3, 4, 5, 6
<i>FTC v. Actavis, Inc.</i> , 133 S. Ct. 2223 (2013).....	1
<i>Harmonic Inc. v. Avid Tech., Inc.</i> , 815 F.3d 1356 (Fed. Cir. 2016)	5
<i>Lundgren v. Upper Skagit Indian Tribe</i> , 389 P.3d 569 (Wash. 2017)	9
<i>Miccosukee Tribe of Indians of Fla. v. Dep’t of Env’tl. Prot. ex rel. Bd. of Trs. of Internal Improv. Tr. Fund</i> , 78 So. 3d 31 (Fla. Dist. Ct. App. 2011).....	9

..

<i>Momenta Pharm., Inc. v. Bristol-Myers Squibb Co.</i> , No. 2017-1694 (Fed. Cir.)	1
<i>Neochord, Inc. v. Univ. of Md.</i> , IPR2016-00208, Paper 28 (P.T.A.B. May 23, 2017)	10
<i>Provident Tradersmens Bank & Tr. Co. v. Patterson</i> , 390 U.S. 102 (1968).....	13
<i>Reactive Surfaces Ltd., LLP v. Toyota Motor Corp.</i> , IPR2016-01914, Paper 36 (P.T.A.B. July 13, 2017).....	10, 14
<i>Smale v. Noretap</i> , 208 P.3d 1180 (Wash. Ct. App. 2009).....	7, 8, 10
<i>Travelers Indem. Co. v. Dingwell</i> , 884 F.2d 629 (1st Cir. 1989).....	12
<i>United States v. Yakima Tribal Ct.</i> , 806 F.2d 853 (9th Cir. 1986)	3-4
Statute and Regulation	
35 U.S.C. § 317(a)	11
37 C.F.R. § 42.74(a).....	11
Rules	
Fed. R. Civ. P. 19(b)	12
Sup. Ct. R. 37.6	1
Other Authorities	
<i>Black's Law Dictionary</i> (8th ed. 2004).....	10
<i>Black's Law Dictionary</i> (9th ed. 2009).....	9-10
Fed. R. Civ. P. 19 advisory committee note (1966)	12

Nat'l Acad. of Scis., Eng'g, and Med., *Making Medicines Affordable: A National Imperative* (2017), available at <http://www.nationalacademies.org/hmd/Reports/2017/making-medicines-affordable-a-national-imperative.aspx> 12-13

U.S. Patent & Trademark Office, U.S. Patent Statistics Chart Calendar Years 1963-2015, U.S. Patent & Trademark Office, https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm15

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.