

**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)

**PATENT OWNER'S MOTION TO DISMISS FOR LACK
OF JURISDICTION BASED ON TRIBAL SOVEREIGN IMMUNITY**

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. The word-for-word
identical paper is filed in each proceeding identified in the caption pursuant to the
Board's Scheduling Order (Paper 10).

TABLE OF CONTENTS

I. SUMMARY OF MOTION 1

II. THE SAINT REGIS MOHAWK TRIBE..... 1

III. RELEVANT PROCEDURAL BACKGROUND 6

 A. District Court Proceedings..... 6

 B. PTAB Proceedings..... 7

IV. ARGUMENTS AND AUTHORITY 8

 A. The Tribe Possesses Immunity From Suit. 8

 1. Congress has not unequivocally abrogated the Tribe’s sovereign immunity..... 10

 2. The Tribe has not unequivocally and expressly waived its immunity to these proceedings. 12

 B. The Tribe’s Sovereign Immunity Applies to all Adjudicatory Proceedings, Including IPR..... 14

 C. This Case Cannot Proceed Without the Tribe. 16

 1. The Tribe is an indispensable party under the Board’s identity-of-interests test..... 16

 2. The Tribe is an indispensable party under F.R.C.P. 19. 20

 3. Allergan lacks authority under the statutory scheme to continue to participate in these proceedings..... 24

V. CONCLUSION..... 25

TABLE OF AUTHORITIES

CASES

Al23 Sys. Inc. v. Hydro-Quebec,
626 F.3d 1213 (Fed. Cir. 2010)..... 16, 17, 20, 22

Am. Greyhound Racing, Inc. v. Hull,
305 F.3d 1015 (9th Cir. 2002).....21

Amerind Risk Mgmt. Corp. v. Malaterre,
633 F.3d 680 (8th Cir. 2011)..... 14

Bassett v. Mashantucket Pequot Tribe,
204 F.3d 343 (2d Cir. 2000)..... 12

Blue Legs v. U.S. Bureau of Indian Affairs,
867 F.2d 1094 (8th Cir. 1989)..... 10

C & L Enters. Inc. v. Citizen Band Potawatomi Tribe of Okla.,
532 U.S. 411 (2001).....9

Coach Servs., Inc. v. Triumph Learning LLC,
668 F.3d 1356 (Fed. Cir. 2012).....25

Demontiney v. U.S. ex rel. Dept. of Interior, Bureau of Indian Affairs,
255 F.3d 801 (9th Cir. 2001)..... 9

Enter. Mgmt. Consultants Inc v. United States,
883 F.2d 890 (10th Cir. 1989).....19, 21

Ethicon Endo-Surgery, Inc. v. Covidien LP,
812 F.3d 1023 (Fed. Cir. 2016)..... 15

Fed. Mar. Comm’n v. S.C. State Ports Auth.,
535 U.S. 743 (2002).....14, 15

Florida Paraplegic, Ass’n, Inc. v. Miccosukee Tribe of Indians of Florida,
166 F.3d 1126 (11th Cir. 1999)..... 10

Florida Prepaid Postsecondary Education Expense Bd. v. College Savings Bank,
527 U.S. 627 (1999)..... 11

Florida v. Seminole Tribe of Florida.,
181 F.3d 1237 (11th Cir. 1999).....9, 11, 12

Friends of Amador Cty. v. Salazar,
554 F. App'x 562 (9th Cir. 2014)..... 1

Garcia v. Akwesasne Housing Authority,
268 F.3d 76 (2d Cir. 2001)..... 12

Great Plains Lending, LLC v. Conn. Dep't of Banking,
No. HHBCV156028096S, 2015 WL 9310700 (Conn. Super. Ct.
Nov. 23, 2015) 15

Home Bingo Network v. Multimedia Games, Inc.,
No. 1:05-CV-0608, 2005 WL 2098056 (N.D.N.Y. Aug. 30, 2005) 11

In re Magnum Oil Tools Int'l, Ltd.,
829 F.3d 1364 (Fed. Cir. 2016)..... 15

Jamul Action Committee v. Chaudhuri,
200 F. Supp. 3d 1042 (E.D. Cal. 2016)19, 22

Kiowa Tribe of Okla. v. Mfg. Techs. Inc.,
523 U.S. 751 (1998).....8, 12, 13

Klamath Tribe Claims Comm. v. United States,
106 Fed. Cl. 87 (2012).....19, 21

Koniag, Inc., Vill. of Uyak v. Andrus,
580 F.2d 601, 614 (D.C. Cir. 1978)25

Lomayaktewa v. Hathaway,
520 F.2d 1324 (9th Cir.1975).....23

Mesa Grande Band of Mission Indians v. United States,
121 Fed. Cl. 183 (2015).....21

Michigan v. Bay Mills Indian Community,
134 S.Ct. 2024 (2014).....5, 8, 13

Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.,
498 U.S. 505 (1991).....8, 9, 12

Osage Tribal Council ex rel. Osage Tribe of Indians v. U.S. Dep’t of Labor,
187 F.3d 1174 (10th Cir. 1999)..... 10

Pan Am. Co. v. Sycuan Band of Mission Indians,
884 F.2d 416 (9th Cir. 1989)..... 12

Puyallup Tribe, Inc. v. Dep’t of Game,
433 U.S. 165 (1977)..... 8

Quileute Indian Tribe v. Babbitt,
18 F.3d 1456 (9th Cir. 1994).....22

Ransom v. St. Regis Mohawk Educ. and Cmty. Fund, Inc.,
86 N.Y.2d 553 (1995)..... 9

Republic of Philippines v. Pimentel,
553 U.S. 851 (2008).....21

Ritchie v. Simpson,
170 F.3d 1092, 1095 (Fed. Cir. 1999)25

Santa Clara Pueblo v. Martinez,
436 U.S. 49 (1978).....8, 9

SAS Inst., Inc. v. ComplementSoft, LLC,
825 F.3d 1341 (Fed. Cir. 2016)..... 15

Specialty House of Creation, Inc. v. Quapaw Tribe,
No. 10-CV-371-GKF-TLW, 2011 WL 308903 (N.D. Okla. Jan. 27, 2011)..... 11

U.S. ex rel. Hall v. Tribal Development Corp.,
100 F.3d 476 (7thth Cir. 1996).....23

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.