

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX INC. and APOTEX CORP.

Petitioners

V.

ELI LILLY & COMPANY

Patent Owner

U.S. Patent No. 7,772,209

Filed: July 11, 2007

Issued: August 10, 2010

Inventor: Clet Niyikiza

TITLE: ANTIFOLATE COMBINATION THERAPIES

Inter Partes Review No.: IPR2016-01190

**PETITIONERS' MOTION FOR JOINDER
PURSUANT TO 35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 AND 42.122(b)**

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I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Petitioners Apotex Inc. and Apotex Corp. (“Apotex”) filed the present petition for *inter partes* review (“the Apotex IPR”) and respectfully submit this Motion for Joinder. Pursuant to 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22, and 42.122(b), Apotex requests institution of an *inter partes* review concerning U.S. Patent No. 7,772,209 (“the ‘209 patent”) and joinder with the *inter partes* review concerning the same patent in *Neptune Generics, LLC v. Eli Lilly & Co.*, assigned Case No. IPR2016-00237, (the “Neptune 237 IPR”), which was instituted on June 3, 2016.

In accordance with the Board’s Representative Order identifying matters to be addressed in a motion for joinder (*Kyocera Corp. et al. v. Softview LLC*, Paper No. 15, IPR2013-00004, Apr. 24, 2013), Apotex submits that: (1) joinder is appropriate because it will promote efficient determination of the validity of the ‘209 patent without prejudice to the prior petitioners, Neptune Generics, LLC (“Neptune”), or to the owners of the ‘209 patent, Eli Lilly & Company (“Lilly”); (2) Apotex’s Petition raises the same ground of unpatentability over the same prior art as those instituted by the Board in the Neptune 237 IPR; (3) joinder would not affect the pending schedule in the Neptune 237 IPR nor increase the complexity of that proceeding, thereby minimizing costs; and (4) Apotex is willing to agree to consolidated filings with Neptune to minimize the burden and the impact on the schedule. *See, e.g., Motorola Mobility LLC v. Softview LLC*, Paper No. 10, IPR2013-00256 (June 20, 2013) and

Amneal Pharm., LLC v. Yeda Res. & Dev. Co., Ltd., Paper No. 9, IPR2015-01976 (Dec. 28, 2015) (granting motions for joinder under similar circumstances). As explained below, Apotex proposes to take an “understudy” role in any joined IPR so long as Neptune does not settle and dismiss the Neptune 237 IPR. *See, e.g., Sony Corp. v. Memory Integrity, LLC*, IPR2015-01376, Paper No. 12, Slip. Op. at 17-18 (Sept. 29, 2015) (“In light of [Petitioner’s] . . . understudy role . . . , we conclude they have demonstrated that joinder would not unduly complicate or delay [the earlier IPR].”).

This Motion for Joinder is timely under 37 C.F.R. §§ 42.22 and 42.122(b), as it is submitted within one month of June 3, 2016, the date on which the Neptune 237 IPR was instituted.

II. STATEMENT OF MATERIAL FACTS

1. Lilly served Apotex with a complaint asserting infringement of the ‘209 patent on or about April 18, 2012. *Eli Lilly & Co. v. Apotex Inc.*, Civ. A. No. 12-cv-499 (S.D. Ind., filed April 17, 2012), ECF 12, 13.

2. On June 3, 2016, the Board instituted trial on claims 1-22 of the ‘209 patent in the Neptune 237 IPR based on one ground of unpatentability raised by Neptune.

3. Apotex filed the instant Petition and Motion for Joinder within one month of the June 3, 2016, institution date of the Neptune 237 IPR.

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