

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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**MYLAN PHARMACEUTICALS INC.,**  
Petitioners

v.

**JANSSEN ONCOLOGY, INC.,**  
Patent Owner

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*Inter Partes* Review No. IPR2016-01332

U.S. Patent No. 8,822,438

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

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## I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Petitioners Mylan Pharmaceuticals Inc. (“Mylan,” or “Petitioner”) respectfully request joinder pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b) of the above-captioned *inter partes* review (hereinafter “Mylan IPR”) with the pending *inter partes* review concerning the same patent and the same grounds of invalidity in *Amerigen Pharmaceuticals Limited v. Janssen Oncology, Inc.*, Case No. IPR2016-00286 (“Amerigen IPR”), which was instituted on May 31, 2016. Joinder is appropriate because it will promote efficient and consistent resolution of the validity of a single patent and will not prejudice any of the parties to the Amerigen 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 May 31, 2016, the date on which the Board instituted the Amerigen IPR.

## II. STATEMENT OF MATERIAL FACTS

1. Petitioners are not aware of any reexamination certificates or pending prosecution concerning U.S. Patent No. 8,822,438 (“the ’438 patent”), which is the subject of both the Amerigen IPR and the Mylan IPR. The following litigations or *inter partes* reviews relate to the ’438 patent are pending:

- *Amerigen Pharms. Ltd. v. Janssen Oncology, Inc.*, IPR2016-00286 (P.T.A.B.);

- *Argentum Pharms. LLC v. Janssen Oncology, Inc.*, IPR2016-01317 (P.T.A.B.);
- *BTG Int’l Ltd. v. Actavis Labs. FL, Inc.*, No. 15-cv-5909-KM-JBC (D.N.J.);
- *BTG Int’l Ltd. v. Amerigen Pharms., Inc.*, No. 16-cv-02449-KM-JBC (D.N.J.);
- *Janssen Biotech, Inc. v. Mylan Pharms. Inc.*, No. 15-cv-00130-IMK (N.D.W. Va.); and
- *BTG Int’l Ltd. v. Glenmark Pharms. Inc., USA*, No. 16-cv-03743-KM-JBC (D.N.J.).

2. Amerigen Pharmaceuticals Limited (“Amerigen”) filed its petition for *inter partes* review of the ’438 patent on December 4, 2015. IPR2016-00286, Paper 1.

3. The Amerigen IPR included the following two grounds for challenging the validity of the ’438 patent:

**Ground 1:** Claims 1-20 were unpatentable as obvious over O’Donnell in view of Gerber; and

**Ground 2:** Claims 1-4 and 6-11 were unpatentable as obvious over U.S. Patent No. 5,604,213 in view of Gerber.

*See* IPR2016-00286, Paper 1.

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