

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERIGEN PHARMACEUTICALS LIMITED and
ARGENTUM PHARMACEUTICALS LLC,

MYLAN PHARMACEUTICALS INC., and

WOCKHARDT BIO AG,
Petitioners,

v.

JANSSEN ONCOLOGY, INC.,
Patent Owner.

Cases: IPR2016-00286,¹ IPR2016-01332, IPR2016-01582
Patent 8,822,438 B2²

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

Before LORA M. GREEN, RAMA G. ELLURU, and
KRISTINA M. KALAN, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

¹ Case IPR2016-01317 has been joined with this proceeding.

² This Order addresses a conference call held in connection with all captioned cases; we therefore exercise our discretion to issue a single order, to be entered in each case. The parties are not authorized to use this case caption, or to file consolidated papers.

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Patent Owner contacted the Board on December 9, 2016, to request a conference call regarding its request to file, as exhibits in each of the above-captioned proceedings, a claim construction order and a decision from a related district court litigation, *BTG International Ltd. v. Actavis Labs. FL, Inc.*, C.A. No. 15-cv-5909-KM-JBC (D.N.J.), involving the same patent that is at issue in the above-captioned proceedings. Patent Owner indicated that each Petitioner in IPR2016-00286, IPR2016-01332, and IPR2016-01582 objects to the filing of these exhibits. A conference call was held on December 13, 2016, among counsel for Patent Owner, counsel for each Petitioner in IPR2016-00286, IPR2016-01332, and IPR2016-01582, and the judges of the panel.

In IPR2016-00286, the Board instituted trial on May 30, 2016; Patent Owner Response has been filed; and Petitioner's Reply is due on January 13, 2017. In IPR2016-01332 and IPR2016-01582, the Board has not yet decided whether to institute trial. Preliminary briefing has closed in IPR2016-01332. Preliminary briefing in IPR2016-01582 will close shortly.

Patent Owner stated that it would defer to the Board on the issue of the relevance of the documents, but pointed out a number of cases where parties have requested to file similar types of documents and such filing was authorized by the Board. Patent Owner indicated that it would not be changing its claim construction position in any of the above-captioned proceedings, and that it was not requesting additional briefing at this time.

Counsel for Petitioners each responded in turn, arguing, *inter alia*, that the filing of these documents would be prejudicial to Petitioners, that there was little time for Petitioners to address the the district court's claim

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construction position in their upcoming filings and depositions, and that the Board's claim construction employs a different standard than the district court employs.

Having taken into account the arguments of each of the parties, the Board authorizes Patent Owner to file the two documents as Exhibits in each of the above-captioned cases, along with an updated Exhibit List. No cover sheet, argument, or any other filing is authorized at this time.

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner may file the district court's claim construction order and a decision as Exhibits in each of the above-captioned cases, along with an updated Exhibit List; and

FURTHER ORDERED that no cover sheet, argument, or other filing is authorized at this time.

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