

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APOTEX INC., APOTEX CORP., EMCURE PHARMACEUTICALS LTD.,  
HERITAGE PHARMA LABS INC., HERITAGE PHARMACEUTICALS INC.,  
GLENMARK PHARMACEUTICALS, INC., USA, GLENMARK HOLDING SA,  
GLENMARK PHARMACEUTICALS, LTD., and MYLAN LABORATORIES  
LIMITED

Petitioners

V.

ELI LILLY & COMPANY

Patent Owner

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

Filed: July 11, 2007

Issued: August 10, 2010

Inventor: Clet Niyikiza

TITLE: ANTIFOLATE COMBINATION THERAPIES

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*Inter Partes* Review No.: IPR2016-01429

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**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”), Emcure Pharmaceuticals Ltd., Heritage Pharma Labs Inc. and Heritage Pharmaceuticals Inc. (“Emcure”), Glenmark Pharmaceuticals, Inc., USA, Glenmark Holding SA, and Glenmark Pharmaceuticals, Ltd. (“Glenmark”), and Mylan Laboratories Limited (“Mylan”) (the “Petitioners”) filed the present petition for *inter partes* review (“Petitioners’ IPR”) and respectfully submit this Motion for Joinder. Under 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22, and 42.122(b), Petitioners request 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 *Sandoz Inc. v. Eli Lilly & Co.*, assigned Case No. IPR2016-00318, (the “Sandoz IPR”), and instituted on June 16, 2016. The Patent Trial and Appeal Board (“PTAB”) has also instituted petitions for IPR concerning the ‘209 Patent IPR2016-00240 and IPR2016-00237 (“Neptune IPRs”).

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), Petitioners submit that: (1) joinder is appropriate because it will promote efficient determination of the validity of the ‘209 patent without prejudice to the prior petitioners, Sandoz Inc. (“Sandoz”), or to the owners of the ‘209 patent, Eli Lilly & Company (“Lilly”); (2) Petitioners’ Petition raises the

same ground of unpatentability over the same prior art as those instituted by the Board in the Sandoz IPR; (3) joinder would not affect the pending schedule in the Sandoz IPR nor increase the complexity of that proceeding, thereby minimizing costs; (4) joinder would not affect the schedule in the Neptune IPRs nor increase the complexity of those proceedings; and (5) Petitioners and Sandoz agree to submit consolidated filings 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, Petitioners have agreed to work with Sandoz and take an “understudy” role in any joined IPR so long as Sandoz does not settle and dismiss the Sandoz 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 16, 2016, the date the Board instituted the Sandoz IPR. (Paper No. 14).

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