

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.

Petitioner

v.

BOEHRINGER INGELHEIM INTERNATIONAL GMBH

Patent Owner

Case No.: IPR2016-01565

Patent No.: 8,853,156

PATENT OWNER'S REQUEST FOR ADVERSE JUDGMENT

UNDER 37 C.F.R. § 42.73(b)(2)

The Board instituted review in the above-captioned proceeding for claims 1, 2, 4, 5, and 23 of U.S. Patent No. 8,853,156. Paper 17 (Institution Decision) at 22. The Board declined to institute review on the remaining claims of the '156 patent. *Id.* Petitioner filed a Request for Rehearing of the Board's decision not to institute trial on all claims but claims 1, 2, 4, 5, and 23. Paper 19. That Request remains pending.

“A party may request judgment against itself at any time during a proceeding.” 37 C.F.R. §42.73(b)(2). Accordingly, Patent Owner Boehringer Ingelheim International GMBH respectfully requests judgment against itself and asks that the Board cancel the currently instituted claims (claims 1, 2, 4, 5, and 23) and enter adverse judgment against it. Patent Owner's cancellation of the instituted claims is not an admission regarding the merits of Petitioners' position that the claims are invalid and/or that the asserted references taken alone, or in combination, teach or suggest all the limitations of the claims.

In view of the requested cancellation of the claims of the '156 patent upon which trial was instituted, Patent Owner respectfully requests that the PTAB enter an adverse judgment against Patent Owner and, to the extent Petitioner's Request for Rehearing is denied, to terminate this proceeding pursuant to 37 C.F.R. § 42.73(b)(2). To the extent Petitioner's Request for Rehearing is granted in whole or in part, Patent Owner reserves the right to address any newly instituted claims

separately, as appropriate.

Date: April 14, 2017

Respectfully submitted,

/s/ Leora Ben-Ami

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PATENT OWNER'S REQUEST FOR ADVERSE JUDGMENT UNDER 37 C.F.R. § 42.73(b)(2)** was served on April 14, 2017, via email to counsel for Petitioners at the following:

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