

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

BAYER INTELLECTUAL PROPERTY GMBH,
Patent Owner.

Case No. IPR2017-00041
Patent No. 7,157,456

PETITIONER'S UNOPPOSED MOTION TO TERMINATE PROCEEDING

I. INTRODUCTION

The Board authorized Petitioner to file an unopposed motion to terminate the proceeding in this case on March 21, 2017. Pursuant to 37 C.F.R. §§ 42.5(a), 42.71(a) & 42.74, Mylan Pharmaceuticals Inc. (“Petitioner”) moves for termination of this *inter partes* review of U.S. Patent No. 7,157,456 (“the ’456 patent”). Bayer Intellectual Property GmbH (“Patent Owner”) does not oppose this Motion.

Petitioner filed its petition for *inter partes* review (“IPR”) of the ’456 patent on October 7, 2016 (Paper 2). There are no other petitioners in the proceeding. There are patents related to the ’456 patent, *i.e.*, U.S. Patent No. 7,585,860 and U.S. Patent No. 7,592,339, that are subject of IPR petitions filed by Petitioner as IPR2017-00042 and IPR2017-00043, respectively. Termination of IPR2017-00042 and IPR2017-00043 is being concurrently requested by Petitioner.

At the time of the Petition’s filing and presently, there is a co-pending lawsuit with respect to ’456 patent and the other related patents between Petitioner and other entities in the action styled CA No. 1:15-cv-00902-SLR, filed by Bayer Intellectual Property GmbH *et al.* in the District of Delaware. (EX1016). A complaint asserting the ’456 patent against Petitioner was served no earlier than October 9, 2015. Thus Petitioner was served with a complaint asserting infringement in the district court action more than a year from the present date.

Patent Owner filed a preliminary response on January 18, 2017 (Paper 8). The deadline for an institution decision is April 18, 2017. There has been no institution decision to date. Thus, the proceeding is still in its preliminary phase, and the Board has yet to reach the merits and issue a decision on institution.

No settlement or agreement between the parties has been reached as to this IPR or the IPRs on the related patents noted above. There are no collateral agreements between the parties as to the termination requested by the Petitioner. Thus, there is no separate paper to be filed with the Board before terminating this preliminary proceeding.¹

Termination of this IPR will preserve the Board's resources and the parties' resources while also securing the just, speedy and inexpensive resolution to the proceeding. In similar circumstances, the Board has previously granted motions to terminate or dismiss using its authority under at least 37 C.F.R. §§ 42.5(a) and 42.71(a). *See, e.g., Celltrion v. Genentech, Inc.*, IPR2015-01733, Paper 12 at 2 (PTAB October 6, 2015) (granting unopposed motion to dismiss petition); *Under Armour, Inc. v. Adidas AG*, IPR2015-01531, Paper 8 at 2 (PTAB September 21,

¹ "Preliminary proceeding" is defined as the period from the filing of a petition for instituting a trial to the written decision as to whether a trial will be instituted. *See* 37 C.F.R. § 42.2.

2015) (granting unopposed motion to dismiss petition); *Samsung Elec. Co. LTD v. Nvidia Corp.*, IPR2015-01270, Paper 12 at 3-4 (PTAB December 9, 2015) (dismissing Petition even over the Patent Owner’s objection); *Ericsson Inc. and Telefonaktiebolaget LM Ericsson v. Adaptix, Inc.*, IPR2016-00619 (PTAB May 4, 2016) (dismissing unopposed motion to dismiss). The rules do not preclude termination of an IPR during the preliminary proceeding stage. The rules expressly provide that the Board “may take up petitions or motions for decisions in any order, may grant, deny, or dismiss any petition or motion, and may enter any appropriate order.” 37 C.F.R. § 42.71(a).

Accordingly, for at least the reasons given above, Petitioner Mylan Pharmaceuticals, Inc. requests termination of this preliminary proceeding without any decision on the merits having been made, pursuant to 37 C.F.R. §§ 42.5(a) and 42.71(a).

Respectfully submitted,

Dated: March 28, 2017

/ Steven W. Parmelee /
Steven W. Parmelee, Lead Counsel
Reg. No. 31,990

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), this is to certify that I caused to be served a true and correct copy of the foregoing Petitioner's Unopposed Motion to Terminate Proceeding, on the Patent Owner via email as follows:

Dov Grossman	dgrossman@wc.com
Galina Fomenkova	gfomenkova@wc.com

Respectfully,

Dated: March 28, 2017

/ Steven W. Parmelee /
Steven W. Parmelee, Lead Counsel
Reg. No. 31,990