

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACRUX DDS PTY LTD., ACRUX LIMITED, and
ARGENTUM PHARMACEUTICALS LLC
Petitioners,

v.

KAKEN PHARMACEUTICAL CO., LTD and
VALEANT PHARMACEUTICALS INTERNATIONAL, INC.,
Patent Owner

IPR2017-00190¹
Patent No. 7,214,506

**OPPOSITION TO THE MOTION TO
TERMINATE THE PROCEEDING**

¹ IPR2017-01429 was previously joined with the instant proceeding.

I. Introduction

Despite Patent Owner and Petitioner Acrux's attempts to mischaracterize Petitioner Argentum's status in this *inter partes* review ("IPR") proceeding, the parties cannot escape the plain fact that Argentum remains a party in this IPR proceeding and is entitled to participate in this IPR proceeding now that it is on remand. Accordingly, the Board should deny the Joint Motion to Terminate the Proceeding ("Joint Motion") and allow the remand to continue with Argentum as the sole Petitioner.²

II. Relevant Facts

On November 2, 2016, Acrux filed a Petition for *inter partes* review of U.S. Patent No. 7,214,506 ("the '506 patent"). *See* Paper 1.

On May 1, 2017, the Board instituted review of the '506 patent based on Acrux's Petition. *See* Paper 12.

On May 12, 2017, Argentum filed a Petition for *inter partes* review of the '506 patent together with a Motion for Joinder seeking to join the instant proceeding as a Petitioner. *See* Papers 2 and 3 of IPR2017-01429.

On November 13, 2017, the Board granted Argentum's Motion and joined Argentum as a Petitioner to the instant proceeding. *See* Paper 40.

² Based on the extensions of time granted in the Board's order of June 22, 2020 and the email of July 13, 2020, this Opposition is timely filed.

On June 6, 2018, the Board issued a Final Written Decision in the captioned proceeding finding the claims of the '506 patent unpatentable. *See* Paper 80.

On August 7, 2018, Patent Owner filed a Notice of Appeal to the Federal Circuit. *See* Paper 86.

Petitioner Argentum did not enter an appearance at the Federal Circuit and did not participate in the appeal.

During the appeal, Patent Owner and Petitioner Acrux settled their dispute involving the '506 Patent and Petitioner Acrux submitted a Notice of Non-Participation in the appeal. The U.S. Patent and Trademark Office intervened in the appeal. *See* Joint Motion at 2.

On March 13, 2020, the Federal Circuit vacated the Board's Final Written Decision and remanded the case back to the Board. *Kaken Pharm. Co., Ltd. v. Bausch Health Co. Inc.*, 952 F.3d 1346 (Fed. Cir. 2020).

As of the date of this Opposition, there is no settlement between Argentum and Patent Owner, and Argentum has not filed any papers withdrawing from the captioned IPR proceeding.

III. Argument

The Joint Motion incorrectly states that there are no petitioners remaining in this IPR proceeding. To the contrary, despite its lack of participation in the appeal, Argentum remains a party to this IPR proceeding before the Board and is entitled

to continue with the remanded proceeding. A recent Board decision makes this point clear. *See ARRIS International PLC v. Sony Corp.*, IPR2016-00834, Paper 56 (February 20, 2020). In the *Arris* case, the Petitioner Arris, settled prior to the appeal proceeding. Upon remand, however, the Board noted that “Arris has not formally withdrawn from the proceedings before the Board.” *See Arris*, IPR2016-00834, Paper 56 at 4. Even with Arris remaining silent in the remand, the Board proceeded in reaching a second Final Written Decision. Even more tellingly, because Arris remained silent in the remand but was still a party to the proceeding—and thus did not seek to file additional arguments—the Board denied Patent Owner’s attempts to supplement the record with new arguments and proceeded on the existing record in reaching its Decision. *See Arris*, IPR2016-00834, Paper 56 at 4.

Thus, it is clear that upon remand—irrespective of that party’s participation or lack thereof in the appeal—until a party officially withdraws from the proceeding before the Board, they remain a party in the IPR proceeding. The facts are even more clear in the present situation, where Argentum has not settled its dispute with Patent Owner, and thus, is entitled to proceed with the remand before the Board.

IV. Conclusion

For the foregoing reasons, Argentum respectfully requests that the Board not

terminate the proceeding and instead allow the proceeding to continue with
Argentum as the sole remaining Petitioner.

Respectfully submitted,

Dated: July 27, 2020

/Teresa Stanek Rea/
Teresa Stanek Rea
Reg. No. 30,427
Shannon M. Lentz
Reg. No. 65,382
CROWELL & MORING LLP
Intellectual Property Group
1001 Pennsylvania Ave, NW
Washington, DC 20004-2595

Counsel for Petitioner Argentum

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.