

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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FAMY CARE LIMITED

Petitioner

v.

ALLERGAN, INC.

Patent Owner

U.S. Patent No. 8,648,048 B2 to Acheampong *et al.*

Issue Date: February 11, 2014

Title: Methods of Providing Therapeutic Effects Using Cyclosporin Components

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*Inter Partes* Review Trial No. 2017-00566

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**PETITIONER'S REPLY MOTION FOR JOINDER  
PURSUANT TO 37 C.F.R. §§ 42.23, 42.24(c)(2), and 42.25(a)(2)**

**TABLE OF CONTENTS**

I. PATENT OWNER’S TERMS ..... 1

II. RESPONSE TO PATENT OWNER’S ARGUMENTS AGAINST  
JOINDER..... 1

    A. FCL and Mylan’s arguments are very similar when not  
    identical. .... 1

    B. The FCL and Mylan expert affidavits are substantially  
    similar. .... 2

    C. Discovery Consolidation and Burden ..... 3

III. CONCLUSION..... 5

## TABLE OF AUTHORITIES

### **Cases**

|   |      |
|---|------|
| <i>Apotex, Inc. and Mylan Pharm. Inc., v. Novartis AG and Mitsubishi Pharma Corp.</i> , IPR2015-00518 ..... | 3    |
| <i>Dell, Inc. v. Network-1 Sec. Solutions, Inc.</i> ,<br>IPR2013-00385.....                                 | 3, 4 |
| <i>Sierra Wireless America, Inc., et al. v. M2M Solutions LLC</i> ,<br>IPR2016-01073.....                   | 4    |
| <i>Torrent Pharm. Ltd. v. Novartis AG and Mitsubishi Pharma Corp.</i> , IPR2014-<br>00784.....              | 3    |

### **Other Authorities**

|                               |   |
|-------------------------------|---|
| 37 C.F.R. § 42.101(b) .....   | 5 |
| 37 C.F.R. § 42.122(b).....    | 5 |
| 37 C.F.R. § 42.23 .....       | 1 |
| 37 C.F.R. § 42.24(c)(2) ..... | 1 |
| 37 C.F.R. § 42.25(a)(2) ..... | 1 |

Pursuant to 37 C.F.R. §§ 42.23, 42.24(c)(2), and 42.25(a)(2), Petitioner Famy Care Limited (“FCL”) respectfully submits this Reply Motion for Joinder to reply to Patent Owner Allergan Inc.’s (“Allergan”) opposition (Paper 9).

## **I. PATENT OWNER’S TERMS**

Allergan offered to withdraw its opposition to joinder if four conditions are met. (Paper 9 at 2). First, FCL’s opening brief had already agreed to one of Allergan’s “conditions”—that FCL agree to conduct the “cross-examination of Patent Owner’s witnesses... within the timeframe that the rules allot for one party.” (*Compare id.* with Paper 5 at 9-10). So, only three purported “conditions” remain in dispute. None should preclude joinder.

## **II. RESPONSE TO PATENT OWNER’S ARGUMENTS AGAINST JOINDER**

Allergan did not refute or respond to any of FCL’s Material Facts (*see* Paper 5 at 2-5). These facts should therefore be considered admitted.

### **A. FCL and Mylan’s arguments are very similar when not identical.**

Allergan alleges that Famy Care’s Petition introduces “additional arguments.” (Paper 9 at 2). However, as explained in FCL’s opening brief, the claims challenged in each petition, and the prior art used, are identical:

|                   | <b>Mylan Petition</b> | <b>Famy Care Petition</b> |
|-------------------|-----------------------|---------------------------|
| Claims Challenged | 1-23                  | 1-23                      |

|                 | <b>Mylan Petition</b>                  | <b>Famy Care Petition</b>              |
|-----------------|--|--|
| Cited Prior Art | Ding '979, Sall, Glonek and Acheampong | Ding '979, Sall, Glonek and Acheampong |

(See Paper 5, Statement of Facts, at 2-3). The Mylan and FCL Petitions also assert nearly identical grounds for unpatentability:

| <b>Ground</b> | <b>Mylan Claims</b>        | <b>FCL Claims</b> | <b>Mylan Basis</b> | <b>FCL Basis</b> | <b>Mylan Art</b>            | <b>FCL Art</b>              |
|---------------|----------------------------|-------------------|--------------------|------------------|-----------------------------|-----------------------------|
| 1             | 1-10, 12-14, 16-20, 22, 23 | 1-23              | § 103              | § 103            | Ding '979, Sall             | Ding '979, Sall             |
| 2             | 11, 21                     | 11, 21            | § 103              | § 103            | Ding '979, Sall, Acheampong | Ding '979, Sall, Acheampong |
| 3             | 15                         | 15                | § 103              | § 103            | Ding '979, Sall, Glonek     | Ding '979, Sall, Glonek     |

(*Id.*) It would waste Board and party resources for these very similar petitions to proceed separately, with separate discovery, briefing, motions, and argument.

**B. The FCL and Mylan expert affidavits are substantially similar.**

Allergan notes FCL relies on two new experts rather than relying on Mylan's expert. (Paper 9 at 2). But the FCL experts support grounds for unpatentability nearly identical to Mylan's as discussed above. Moreover, as noted in the motion, FCL's experts include a distinguished clinician who can provide the Board a valuable perspective on the secondary considerations arguments Allergan leans heavily on. As the Board has noted, secondary considerations evidence is

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