

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

TEVA PHARMACEUTICALS USA, INC.,

Petitioner,

v.

ALLERGAN, INC.,

Patent Owner

U.S. Patent No. 8,633,162

Issued Date: January 21, 2014

Title: Methods of Providing Therapeutic Effects  
Using Cyclosporin Components

---

IPR Case No.: IPR2017-00583

Patent No. 8,633,162

---

**Motion for Joinder**

**Pursuant to 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22 and 42.122(b)**

**Mail Stop “PATENT BOARD”**

Patent Trial and Appeal Board

U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

TABLE OF CONTENTS

I. STATEMENT OF THE PRECISE RELIEF REQUESTED .....2

II. STATEMENT OF MATERIAL FACTS .....3

III. STATEMENT OF REASONS FOR RELIEF REQUESTED .....5

    A. Legal Standard .....5

    B. Joinder Will Not Impact the Mylan IPR’s Case Schedule .....7

    C. Joinder Will Enhance Efficiency by Avoiding Duplicate  
    Efforts and Inconsistencies .....10

    D. A Joined Proceeding Avoids Prejudice to Teva and Will  
    Not Prejudice Mylan or Allergan.....10

    E. Joinder will not prejudice Patent Owner or Mylan.....11

IV. CONCLUSION.....12

## I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Pursuant to 35 U.S.C. § 315(c), 37 C.F.R. § 42.22, and 37 C.F.R. § 42.122(b), Teva Pharmaceuticals USA, Inc., (“Teva”) respectfully submits this Motion for Joinder, together with a petition for *inter partes* review of U.S. Patent No. 8,633,162 (“the ’162 patent”), seeking cancellation of claims 1-24 of the ’162 patent (“the Teva IPR”) and joinder of this proceeding with *Mylan Pharmaceuticals Inc., v. Allergan, Inc.*, Case IPR2016-01130 (the “Mylan IPR” or “IPR 1130”).

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 December 8, 2016, the date on which the Mylan IPR was instituted. *See* Mylan IPR, Paper 8.

Teva submits that joinder is appropriate because it will: (1) promote efficient determination of the validity of the ’162 patent in a single proceeding without prejudice to first petitioner Mylan Pharmaceuticals Inc. (“Mylan”) or patent owners Allergan, Inc. (“Allergan” or “Patent Owner”) because Teva’s petition raises the *identical* grounds of unpatentability instituted by the Board in the Mylan IPR (*see, e.g., Motorola Mobility, Inc. v. Softview, Inc.* IPR2013-00256, Paper No. 10 (granting motion for joinder under similar circumstances)); (2) not affect the schedule in the Mylan IPR nor increase the complexity of that proceeding, minimizing costs; and (3) minimize burden because Teva will agree to

consolidated filings<sup>1</sup> and discovery and will accept a back-seat, “understudy” role in the joint proceedings.<sup>2</sup> Absent joinder, Teva could be prejudiced if the Mylan IPR is terminated before a final written decision is issued, as Teva’s interests will not be adequately represented before the Board. Accordingly, joinder should be granted.

This Motion for Joinder and accompanying Petition are timely under 37 C.F.R. §§ 42.22 and 42.122(b), as they are submitted within one month of December 8, 2016, the Mylan IPR’s institution date. *See Mylan IPR, Paper 8 (Decision).*

## II. STATEMENT OF MATERIAL FACTS

1. Petitioner and other entities are involved in litigation over the ’162 patent and related patents in the action styled *Allergan, Inc. v. Teva Pharmaceuticals USA, Inc., et al.*, No. 2:15-cv-01455, filed by Allergan, Inc. in the

---

<sup>1</sup> Teva agrees to consolidated filings for all substantive papers in the respective proceedings, except for motions that do not involve Mylan. Teva agrees to incorporate its filings with those of Mylan in a consolidated filing, subject to the ordinary rules for one party on page limits.

<sup>2</sup> To the extent the Board considers granting Teva’s motion for joinder, Teva is willing to take a passive role. For example, Teva agrees not file additional papers, not file additional pages to Mylan’s papers, not present any new, additional, or supplemental arguments, not cross-examine Allergan’s expert or attempt to offer a rebuttal expert of its own, and not present any arguments at oral hearings. *See e.g., Samsung Elec. Co., Ltd. v. Arendi S.A.R.L.*, IPR2014-01518, Paper 10 at 6 (PTAB Mar. 18, 2015) (allowing joinder where movants takes a “limited understudy role” without a separate opportunity to actively participate). Only if Mylan drops out of the proceedings for any reason, will Teva cease its passive role.

Eastern District of Texas (EX1023). Petitioner also identifies the following pending actions involving the '162 patent: *Allergan, Inc., v. Innopharma, Inc. and Pfizer, Inc.*, No. 2:15cv1504, in the Eastern District of Texas.

2. On June 3, 2016, Mylan filed its petition for *inter partes* review seeking cancellation of claims 1-24 of the '162 patent. (Mylan IPR, Paper 3.)

3. The Mylan IPR petition included the following three grounds for challenging the validity of the '162 patent:

Ground 1: Claims 1-10, 12-14, 16-20, and 22-24 are obvious under 35 U.S.C. § 103 over Ding '979 and Sall;

Ground 2: Claims 11 and 21 are obvious under 35 U.S.C. § 103 over Ding '979, Sall and Acheampong; and

Ground 3: Claim 15 is obvious under 35 U.S.C. § 103 over Ding '979, Sall, and Glonek '586.

4. On September 9, 2016, Patent Owner filed a Preliminary Response. (Mylan IPR, Paper No. 7)

5. December 8, 2016, the Board instituted review of claims 1-24 of the '162 patent in the Mylan IPR with respect to Grounds 1-3. (Mylan IPR, Paper 8.)

6. On December 6, 2016, the Board entered a scheduling order in the Mylan IPR setting various dates, including the oral argument set for August 17, 2017. (Mylan IPR, Paper 10).

# 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.