

APOTEX INC., APOTEX CORP.,
ARGENTUM PHARMACEUTICALS LLC,
ACTAVIS ELIZABETH LLC, TEVA PHARMACEUTICALS USA, INC.,
SUN PHARMACEUTICAL INDUSTRIES, LTD.,
SUN PHARMACEUTICAL INDUSTRIES, INC., and
SUN PHARMA GLOBAL FZE,
Petitioners,

v.

NOVARTIS AG.,
Patent Owner.

Case IPR2017-00854¹
Patent US 9,187,405 B2

Before CHRISTOPHER M. KAISER and ROBERT A. POLLOCK,
Administrative Patent Judges.

POLLOCK, *Administrative Patent Judge.*

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ Cases IPR2017-01550, IPR2017-01946, and IPR2017-01929 have been joined with this proceeding.

A conference call in the above proceedings was held on March 29, 2018, among counsel for the respective Petitioners, Patent Owner, and Judges Pollock and Kaiser to discuss issues raised in the parties emails of March 28, 2018. Ex. 3010 (Petitioner's email); Ex. 3011 (Patent Owner's email and attached correspondence between the parties); Ex. 3012 (attachments from Ex. 3011). Petitioner engaged a court reporter for the call. Petitioner will submit a copy of the transcript as an exhibit, which, in conjunction with this Order, will serve as the official record of the call.

Petitioner seeks permission to file a motion to strike Patent Owner's Sur Reply (Paper 63) or, in the alternative, an opportunity to submit responsive briefing with supporting evidence on an adjusted schedule, because Patent Owner allegedly exceeded the scope of argument permitted in our Order of February 23, 2018 (Paper 54). Having reviewed the transcript of our February 21, 2018 teleconference (Ex. 2094) and related correspondence (Ex. 3004), we conclude that the phrasing of our Order in paper 54 was imprecise and overly narrow. Although Patent Owner should have brought this to our attention prior to filing its sur reply, it has, nevertheless, reasonably interpreted the intended scope of our order. Accordingly, Petitioner's request for a motion to strike is denied.

Petitioner's request to submit responsive briefing with supporting evidence is also denied. The thrust of Patent Owner's sur reply goes to the testimony of Dr. Benet, Petitioner's expert in pharmacology. As Patent Owner points out, Petitioner had the opportunity to advance such an expert in its Petition but chose not to do so until its Reply. At this stage of the proceeding, additional briefing would require further adjustment of the schedule and additional rounds of depositions which would be unduly disruptive. Petitioner will have ample

opportunity to challenge the opinions of Patent Owner's experts in the upcoming depositions.

Petitioner further seeks authorization to file a sur-reply to Paper 64, Patent Owner's Reply regarding its Contingent Motion to Amend. Having considered the parties' arguments on this matter, we conclude that the request is reasonable. Although this, too, threatens to disrupt the trial schedule, we grant Petitioner's request on an accelerated basis. Petitioner may have 12 pages to respond. Petitioner's sur reply shall be filed no later than the close of business on April 19, 2018. Further, any experts submitting testimony in support of Petitioner's sur reply shall be made available no later than 10 business days after the filing of the sur reply. Upon failure to do so, Patent Owner may request that we order Petitioner to show cause why the supporting expert testimony should not be struck.

Finally, considering the posture of this case, we grant Petitioner's request that the ten-page limit on observations on cross-examination will apply on a per-witness basis.

SO ORDERED

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