

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, ROBERT A. POLLOCK, and
KRISTI L. R. SAWERT, *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.

In our Order of March 29, 2018, we permitted Petitioner to file a sur-reply responding to Patent Owner's reply in support of its contingent motion to amend. Paper 66, 3. By email dated April 4, 2018, Patent Owner seeks clarification regarding the scope of argument and supporting testimony permitted in the authorized sur-reply. *See* Ex. 1013.

Our Guidance with respect to Patent Owner replies to Petitioners' oppositions to motions to amend applies equally with respect to Petitioner's sur-reply here:

A reply may only respond to arguments raised in the corresponding opposition. § 42.23. While replies can help crystalize issues for decision, a reply that raises a new issue or belatedly presents evidence will not be considered and may be returned. The Board will not attempt to sort proper from improper portions of the reply. Examples of indications that a new issue has been raised in a reply include new evidence necessary to make out a prima facie case for the patentability or unpatentability of an original or proposed substitute claim, and new evidence that could have been presented in a prior filing.

Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012). Accordingly, Petitioner's sur-reply and any supporting expert testimony shall be limited to responding to arguments and citations to expert testimony expressly set forth in Patent Owner's Reply to Petitioner's Opposition to Patent Owner's contingent motion to amend.

SO ORDERED

IPR2017-00854
Patent 9,187,405 B2

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IPR2017-00854
Patent 9,187,405 B2

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