

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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MYLAN PHARMACEUTICALS INC.,  
Petitioner,

v.

COSMO TECHNOLOGIES LIMITED,  
Patent Owner.

U.S. Patent No. 9,320,716 to Villa et al.  
Issue Date: April 26, 2016

Title: Controlled Release and Taste Masking Oral Pharmaceutical Compositions

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*Inter Partes* Review No.: IPR2017-01035

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**JOINT MOTION TO TERMINATE PROCEEDINGS**

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U.S. Patent and Trademark Office  
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## **I. Statement of Relief Requested**

Pursuant to 35 U.S.C. § 317(a), 37 C.F.R. § 42.72, and 37 C.F.R. § 42.74, and the Board's authorization email dated November 15, 2017, Petitioner Mylan Pharmaceuticals, Inc. and Patent Owner Cosmo Technologies, Inc. jointly move that the Board terminate the above captioned *inter partes* review (IPR) proceeding in its entirety as a result of settlement between Petitioner and Patent Owner.

Petitioner represents that it will no longer participate in this *inter partes* review and will file no further papers.

The parties are filing concurrently herewith a separate request that the settlement agreement being filed herewith be treated as business confidential information and be kept separate from the files of the involved patent, pursuant to 37 C.F.R. § 42.74(c).

## **II. Statement of Facts**

Patent Owner brought a suit against Petitioner in the District Court for Delaware (No. 16-cv-00152), asserting that Petitioner infringed one or more claims of U.S. Patent No. 9,320,716, among other patents.

Petitioner filed this IPR petition on March 9, 2017. On September 21, 2017, the Board instituted *inter partes* review of claims 1–29 of the '716 patent. Pursuant to the concurrently issued scheduling order, merits briefing is to conclude on March 20, 2018, while Oral Argument concerning the validity of the '716 patent is to be held on June 15, 2018. The Board has not yet decided the merits of the pending IPR proceeding.

On November 14, 2017, Petitioner, Defendants, and Patent Owner entered into a settlement agreement. *See* Ex. 2037 (Confidential). Under the terms of the settlement agreement, Patent Owner agrees to dismiss its infringement claim of U.S. Patent No. 9,320,716 against Petitioner and terminate the related district court litigation.

### **III. Related District Court Litigation**

The parties' settlement agreement, Exhibit 2037, has resolved litigation between Mylan and Cosmo in *Cosmo Technologies Limited, Valeant Pharmaceuticals International, and Valeant Pharmaceuticals Luxembourg S.A. R.L. v. Mylan Pharmaceuticals Inc.*, 16-cv-00152 (D. Del.) ("Mylan Action"). U.S. Patent No. 9,320,716 is still currently the subject of *Cosmo Technologies Limited, Valeant Pharmaceuticals International, and Valeant Pharmaceuticals Luxembourg S.A. R.L. v Lupin Ltd. and Lupin Pharmaceuticals, Inc.*, 15-cv-00669 (D. Del.), which is stayed.

### **IV. Related *Inter Partes* Review**

Concurrently with the filing of this IPR No. IPR2017-01035 concerning the '716 patent, Mylan also filed IPR No. IPR2017-01034 concerning U.S. Pat. No. 8,784,888. The '888 patent is related to the '716 patent. The Board granted the parties' joint motion to terminate IPR No. IPR2017-01034 on September 20, 2017.

Petitioner Argentum Pharmaceuticals LLC ("Argentum") filed a petition concerning the '716 patent on October 20, 2017 and a motion for joinder to IPR No. IPR2017-01035. No substantive rulings have been made in that IPR proceeding. Argentum is not subject to any statutory bar under 35 U.S.C. § 315(b), and termination of this IPR proceeding would not prejudice Argentum.

### **V. Argument**

Section 317(a) provides: "An inter partes review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed." 35 U.S.C. § 317(a). It further provides: "If no petitioner remains in the inter partes review, the Office may terminate the review or proceed to a final written decision under section 318(a)." *Id.*

Similarly, 37 C.F.R. § 42.72 provides that “[t]he Board may terminate a trial without rendering a final written decision, where appropriate, including where the trial is consolidated with another proceeding or pursuant to a joint request under 35 U.S.C. 317(a).”

The Trial Practice Guide additionally counsels that “[t]here are strong public policy reasons to favor settlement between the parties to proceeding” and that the Board “expects that a proceeding will terminate after the filing of a settlement agreement, unless the Board has already decided the merits of the proceeding. 35 U.S.C. 317(a), as amended, and 35 U.S.C. 327.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012).

Petitioner represents that it will no longer participate in this *inter partes* review and will file no further papers. Petitioner has also agreed not to permit its expert witness, Dr. Anthony Palmieri, to assist Argentum or any other Petitioner in an IPR proceeding challenging the patent at issue.

**A. The Board Should Terminate This IPR Proceeding In Its Entirety**

As noted in the Statement of Facts, briefing on the merits will not conclude until March 20, 2018, while Oral argument, if held, will not occur until June 15, 2018. Thus, the Board should terminate the proceedings with respect to Mylan, the sole Petitioner in this proceeding. Moreover, because no petitioner remains after termination with respect to Mylan, the Board should exercise its discretion and terminate review in its entirety under 35 U.S.C. § 317 and 37 C.F.R. §§ 42.72, 42.74.

In the past, the Board has terminated the entire proceedings based on joint motions to terminate even after the merits had been fully briefed and the matter was ready for oral argument, or even after oral argument. *See Toyota Motor Corp. v. Blitzsafe Tex. LLC*, IPR2016-00421, Paper 28 (Feb. 21, 2017) (granting motion to terminate even after all substantive papers were filed, “particularly in light of the

fact that a final written decision is not due until more than four months from now”); *Plaid Techs., Inc. v. Yodlee, Inc.*, IPR2016-00273, Paper 29 (Feb. 8, 2017) (granting motion to terminate because “the parties' joint motions to terminate were filed prior to the oral hearings in these cases”); *Apex v. Resmed*, IPR201-00512, Paper 39 (Sept. 12, 2014) (granting joint motion to terminate after the parties had fully briefed the matter); *Rackspace Hosting, Inc. v. Clouding IP, LLC*, CBM2014-00034, Paper 28 (Dec. 9, 2014) (granting motion to terminate after close of evidentiary record and less than ten days before trial); *Volution v. Versata Software*, CMB2013-00018, Paper 52 (June 17, 2014) (granting motion to terminate after oral argument).

Because the parties have yet to brief the merits of this case and the Board has yet to conduct an oral hearing and issue a decision on the merits, termination of the entire proceeding would save the Board significant administrative resources. Termination would also further the AIA’s purpose of providing an efficient and less costly alternative forum for patent dispute and its encouragement for settlement. The parties’ settlement saves the parties costs related to this *inter partes* review and also the related district court litigation involving infringement and invalidity claims concerning U.S. Patent No. 9,320,716.

The parties understand that if the Board terminates this IPR with respect to Petitioner under 35 U.S.C. § 317(a), no estoppel under § 315(e) will attach to Petitioner, or Petitioner’s privy, based on Petitioner seeking this IPR. The parties also understand that if the Board terminates this IPR with respect to Petitioner before a final written decision on patentability, no estoppel will attach to Petitioner, or Petitioner’s privy, under 37 C.F.R. § 42.73(d)(1). The parties understand that if the Board terminates this IPR before a final written decision on patentability, no preclusion will attach to Patent Owner under 37 C.F.R. § 42.73(d)(3).

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