

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC
Petitioner,

v.

KAKEN PHARMACEUTICAL CO., LTD.
Patent Owner

Patent No. 7,214,506
Issue Date: May 8, 2007
Title: Method for Treating Onychomycosis

Case No. IPR2017-01429

REPLY TO PATENT OWNER'S OPPOSITION TO JOINDER

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I. Introduction

Argentum Pharmaceuticals LLC (“Argentum” or “Petitioner”) has moved for joinder of this *inter partes* review (Case No. IPR2017-01429, “Argentum IPR”) to an earlier *inter partes* review filed by Acrux DDS Pty Ltd. (Case No. IPR2017-00190, “Acrux IPR”). The Argentum IPR is identical to the Acrux IPR in all substantive aspects. Kaken Pharmaceutical Co. Ltd. (“Patent Owner”) opposed Petitioner’s motion alleging that Acrux and Argentum are not working together. After filing of the Patent Owner’s Opposition, Argentum and Acrux conferred and resolved Patent Owner’s concerns with respect to joinder. Specifically, on July 10, 2017, Acrux and Argentum agreed to the joint retention of Dr. Kenneth Walters and Argentum agreed to participate in the joined proceeding in a limited capacity as an understudy, absent termination of Acrux as a party. Argentum has taken all necessary steps to ensure that joinder will not introduce complexity and expense to briefing, discovery, and hearings, or threaten to delay the existing trial schedule. For at least the following reasons, the Board should institute Argentum’s IPR and join it to the Acrux IPR.

II. Argentum Agrees to Withdraw Dr. Maurizio Del Poeta and Retain Dr. Kenneth Walters

Argentum has agreed to retain Dr. Kenneth Walters jointly with Acrux. Argentum agrees to withdraw its expert declaration of Dr. Maurizio Del Poeta within 3 business days of the Board’s decision granting Argentum’s joinder

motion, but will not do so preemptively, in the event Acrux is no longer a party to the joined IPR. Upon the Board's decision granting joinder, Argentum will rely solely on the declaration and testimony of Dr. Walters. The Board has previously acknowledged that such concessions on the part of a party seeking to join are sufficient to minimize the impact on the original proceeding (*see SAP America Inc. v. Clouding IP, LLC*, IPR2014-00306, Paper 13, page 4).

III. Joinder Will Not Complicate or Disrupt the Trial Schedule

Joinder will not complicate the Acrux IPR because Argentum and Acrux have agreed to cooperate, consolidate submissions, and jointly retain the same expert. In fact, Argentum has agreed to play a passive, secondary role in the proceedings. Given the Argentum Petition is substantively identical to the Acrux petition, the Board may adopt procedures similar to those used in other cases to simplify briefing and discovery during trial. *See e.g., Hyundai*, IPR2014-01543, Paper No. 11 at 5; *Dell*, IPR2013-00385, Paper No. 17 at 8-10; *Motorola*, IPR2013-00256, Paper 10 at 8-10. Specifically, as long as Acrux remains a party, Acrux and Argentum will consolidate filings and Argentum will not make any separate submissions unless there are issues raised that are unique to Argentum. Moreover, Argentum has agreed to coordinate with Acrux on scheduling in the joined proceedings and Argentum will not request additional time at depositions or at the oral hearing. Contrary to Patent Owner's allegations, Acrux and Argentum

have agreed to cooperate, consolidate submissions, jointly retain Dr. Walters, and apportion hearing time. Therefore, joinder will not disrupt the trial schedule.

IV. Argentum Agrees with Patent Owner's Safeguards

In its opposition, Patent Owner lays out safeguards that the Board should implement if it grants joinder. Argentum reiterates its intention to only play a secondary role in the Acrux IPR. Argentum will consolidate all submissions and will not submit any separate papers, except to address specific issues unique to Argentum (e.g., settlement, discovery, real party-in-interest). Argentum agrees not to receive any separate cross-examination or re-direct examination time and that all cross-examinations will occur within the timeframe normally allotted by the rules to one party. Thus, Argentum agrees to all of Patent Owner's safeguards.

V. Conclusion

For the foregoing reasons, Argentum's joinder request is proper and will neither complicate nor delay the Acrux IPR. Therefore, the Board should join this IPR with *Acrux DDS Jty Ltd. v. Kaken Pharmaceutical Co. Ltd.*, IPR2017-00190.

Respectfully submitted,

Dated: July 12, 2017

/Teresa Stanek Rea/

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