UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC
Petitioner,

v.

NOVARTIS A.G.,
Patent Owner.

U.S. Patent No. 9,187,405
Issue Date: November 17, 2015
Title: S1P Receptor Modulators for Treating Relapsing-Remitting Multiple Sclerosis

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Inter Partes Review No. IPR2017-01550

MOTION FOR JOINDER
35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b)

TABLE OF CONTENTS

I. STATEMENT OF PRECISE RELIEF REQUESTED

Petitioner Argentum Pharmaceuticals LLC ("Argentum" or "Petitioner") respectfully requests joinder pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b) of the above-captioned *inter partes* review ("Argentum IPR") with the pending *inter partes* review involving the same patent and the same grounds of invalidity in *Apotex, Inc. and Apotex Corp. v. Novartis AG*, IPR2017-00854 ("Apotex IPR"), which was filed on February 3, 2017. Joinder is appropriate because it will promote efficient and consistent resolution of two related proceedings involving the same patent in a single *inter partes* review.

This Motion for Joinder is timely because it was filed before the institution date of the Apotex IPR and, therefore, "no later than one month after the institution date of any *inter partes* review for which joinder is requested." 37 C.F.R. § 42.122(b). *See Mercedes-Benz USA, LLC v. Innovative Display Techs. LLC*, Case IPR2015-00360, slip. op. at 4 (PTAB May 22, 2015) (Paper 22) (holding joinder motion timely, as it was filed more than one month before institution decision); *Taiwan Semiconductor Mfg. Co. v. Zond, LLC*, Case IPR2014-00781, slip. op. at 4 (PTAB May 29, 2014) (Paper 5) (explaining that preinstitution joinder movant "should indicate whether it would withdraw noninstituted grounds of unpatentability should the Board institute an *inter partes* review with less than all of the asserted grounds of unpatentability in [the earlier filed, not-yet-instituted IPR] proceedings").

II. BACKGROUND

On February 3, 2017, Apotex filed a Petition for *inter partes* review challenging claims 1-6 of United States Patent No. 9,187,405 (the "'405 patent"), which was assigned Case No. IPR2017-00854.

The Apotex IPR Petition asserts the following grounds of unpatentability:

(1) Claims 1-6 are unpatentable under 35 U.S.C. § 103 as obvious over Kovarik in view of Thomson.

(2) Claims 1-6 are unpatentable under 35 U.S.C. § 103 as obvious over Chiba in view of Kappos 2005 and Budde.

(3) Claims 1-6 are unpatentable under 35 U.S.C. § 102 as anticipated by Kappos 2010.

The Petition filed by Argentum concurrently with the instant Motion for Joinder asserts the same grounds of unpatentability against the same patent claims as the Apotex IPR. Argentum is willing to withdraw any grounds of unpatentability that the Board does not institute in the Apotex IPR. *See Taiwan Semiconductor*, IPR2014- 00781, Paper 5 at 4.

Argentum's IPR Petition is substantively identical to Apotex's IPR Petition and includes all the same exhibits as those filed in the Apotex IPR. Argentum has added one additional exhibit (EX1041) which is a copy of the Federal Circuit Decision of April 12, 2017 affirming the Final Written Decision in IPR2014-00784,

an IPR related to the present proceeding.

Apotex has represented to Argentum that it will not oppose this Motion for Joinder.

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

The Leahy-Smith America Invents Act ("AIA") permits joinder of *inter partes* review proceedings. The statutory provision governing joinder of *inter partes* review proceedings is 35 U.S.C. § 315(c), which reads as follows:

> (c) JOINDER.—If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

In exercising its discretion to grant joinder, the Board considers the impact of substantive and procedural issues on the proceedings, as well as other considerations, while being "mindful that patent trial regulations, including the rules for joinder, must be construed to secure the just, speedy, and inexpensive resolution of every proceeding." *Dell, Inc. v. Network-1 Security Solutions, Inc.,* IPR2013-00385, Paper No. 17 (July 29, 2013) at 3. The Board should consider "the policy preference for joining a party that does not present new issues that might complicate or delay an existing proceeding." *Id.* at 10. Under this framework, joinder of the present Argentum IPR with the Apotex IPR is appropriate.

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