

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DR. REDDY'S LABORATORIES S.A. and
DR. REDDY'S LABORATORIES, INC.
Petitioners,

v.

MONOSOL RX, LLC
Patent Owner

Case No. IPR2017-01582
Patent No. 8,603,514

**PETITIONERS' REPLY IN SUPPORT OF THE MOTION FOR JOINDER
WITH IPR2017-00200**

I. INTRODUCTION

Monosol RX, LLC (“Patent Owner”) opposed Dr. Reddy’s Laboratories, S.A. and Dr. Reddy’s Laboratories, Inc.’s (collectively, “DRL” or “Petitioners”) Motion for Joinder of its proceeding, IPR2017-01582, with Mylan Technologies Inc.’s (“Mylan”) IPR2017-00200 (“the ’200 IPR”) because, at the time that DRL filed its Motion for Joinder, DRL and Mylan had not yet finalized an agreement to cooperate in a joint IPR proceeding. At the same time, Monosol did not oppose a nearly identical motion for joinder by Par Pharmaceutical, Inc. (“Par”) based on a representation by Par that it had an agreement to cooperate with Mylan. As foreshadowed in DRL’s opening brief, Mylan and DRL have now finalized their agreement to cooperate in a joint IPR proceeding, and Mylan does not oppose DRL’s motion for joinder. DRL’s agreement with Mylan and Par’s agreement with Mylan (as described by Patent Owner) each provides the same conditions for joinder, with DRL and Par each adopting the familiar “understudy” role of a joined petitioner.

DRL’s agreement with Mylan addresses every valid concern raised by Patent Owner in its Opposition to Petitioners’ Motion for Joinder, and effectively moots the opposition. The Board should therefore grant Petitioners’ motion.

II. ARGUMENT

Patent Owner's principal argument in opposition to Petitioners' Motion for Joinder was that, since Mylan and DRL had not agreed on the conditions under which a joined IPR would proceed, joinder of DRL to the '200 IPR would delay the "just, speedy, and inexpensive" resolution of that proceeding. (Opposition, at 12.) DRL's agreement with Mylan ensures that joining DRL would not interfere with the schedule of the '200 IPR and would not delay resolution.

Under Mylan and DRL's agreement, DRL will take the familiar "understudy" role of a petitioner joined to an instituted IPR. Specifically, DRL has agreed that, so long as Mylan remains a party to the IPR: (1) DRL will rely on the expert declaration of Mylan's expert in the '200 IPR; (2) DRL will not receive any separate cross examination or redirect time during witness depositions, and cross examinations will occur within the timeframe normally allotted by the Board's rules to one party; and (3) DRL will incorporate its filings with those of Mylan in consolidated filings, subject to the Board's rules for one party on page limits. DRL further agrees to adopt a silent role in all communications with the Board and at the oral hearing for the joined proceeding.

DRL's Petition presents the same ground of unpatentability that was instituted in the '200 IPR, and relies on the same documentary evidence, with the exception of the expert declaration. Along with its Petition, DRL relied on the

declaration of its own expert who offered testimony that is nearly identical to the testimony offered by Mylan's expert declarant in the '200 IPR. DRL understands that, upon joinder with the '200 IPR, the instant IPR proceeding will be terminated and DRL's expert declaration will not be of record in the joined proceeding. DRL therefore has received Mylan's consent to retain Mylan's declarant, Dr. Buckton, to work with DRL for purposes of the joined IPR. Since DRL will not have any expert that is not also an expert for Mylan, joining DRL will not necessitate any further depositions and will therefore not affect the schedule for the '200 IPR.

Par has also filed a petition challenging the patentability of the '514 patent, along with a motion for joinder with the '200 IPR. Patent Owner has stated that it does not oppose Par's motion for joinder because Par agreed with Mylan to play an understudy role in the joined IPR, and its participation would therefore not affect the schedule of the '200 IPR. (Opposition, at 9-10 and note 4.) Because DRL has agreed to play an understudy role in the joined proceeding, identical to the understudy role that Par has agreed to play in the joined proceeding (compare the terms listed above with the terms listed in Par's Motion for Joinder, IPR2017-01557, Paper 4, at 5-6), Patent Owner's concerns regarding joinder of DRL are addressed.

For all of the reasons stated in Petitioner's Motion for Joinder, joining DRL to the '200 IPR would further the Board's "policy preference for joining a party

that does not present new issues that might complicate or delay an existing proceeding.” *Enzymotec Ltd. v. Neptune Techs & Bioresources, Inc.*, IPR2014-00556, Paper 19 at 6 (P.T.A.B. Jul. 9, 2014). The decisions that Patent Owner cites in its Opposition, having entirely different factual patterns than those present here, do not instruct otherwise. In *Samsung Elects. Co. v. Affinity Labs of Texas, LLC*, IPR2015-00820, Paper 12 (P.T.A.B. May 15, 2015), the Board denied joinder for Samsung’s fourth petition for IPR of the same patent, after having granted each of the first three petitions. In both *LG Elects. Inc. v. ATI Techs. ULD*, IPR2015-01620, Paper 10 (P.T.A.B. Feb. 2, 2016) and *Reloaded Games, Inc. v. Parallel Networks, LLC*, IPR2014-00950, Paper 12 (P.T.A.B. Oct. 22, 2014), the Board denied petitioner’s motion to join an IPR in which it was itself the petitioner. The second petition relied on different grounds and concerned different claims than were involved in the already-instituted IPR. Thus, joinder would have added new issues into the instituted IPR. And, in *Ubisoft, Inc. v. Uniloc USA, Inc.*, IPR2016-00414, Paper 16 (P.T.A.B. Jun. 2, 2016), the Board denied joinder to an IPR that had already been terminated (and it was petitioner’s third petition; the first IPR had reached a final written decision and the first CBM had been denied institution).

In this case, DRL’s petition presents only challenges identical to those that are already instituted by the Board. Joinder is therefore appropriate because it will

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