

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC

Petitioner

v.

ICOS CORPORATION,

Patent Owner

U.S. Patent No. 6,943,166 B1

Inter Partes Review No. IPR2017-01762

MOTION FOR JOINDER

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

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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 ground of invalidity in *Mylan Pharmaceuticals Inc. v. ICOS Corporation*, IPR2017-00323 (“Mylan IPR”), which was instituted on June 12, 2017. Joinder is appropriate because it will promote efficient and consistent resolution of the validity of a single patent and will not prejudice any of the parties to the Mylan IPR.

Argentum notes that on July 7, 2017, Mylan and Patent Owner filed a Joint Motion to Terminate the Mylan IPR. IPR2017-00323, Paper 18. Argentum is also aware that Dr. Reddy’s Laboratories, Inc. (“Dr. Reddy’s”) moved for joinder of its petition (“DRL IPR”) to the Mylan IPR on July 10, 2017. IPR2017-01757, Motion for Joinder, Paper 3. Institution of the Argentum IPR and joinder with the Mylan IPR will ensure that at least one petitioner remains to complete trial at the Board. Joinder here would comport with the Board’s decisions in two IPRs where the Board granted joinder of a second IPR just one day before the Board terminated the petitioner of the first IPR: *AT&T Services, Inc. v. Convergent Media Solutions, LLC*, Case IPR2017-01237, (PTAB May 10, 2017) (Paper 10) (granting joinder to second IPR); *Netflix, Inc. v. Convergent Media Solutions, LLC*, Case IPR2016-01814, (PTAB May 11, 2017) (Paper 15) (terminating only the petitioner of the first IPR).

Although a motion was filed to terminate the Mylan IPR on July 7th, joinder of the Argentum IPR is still appropriate. First, the Board’s decision to grant joinder in the *Convergent* IPRs is applicable here, as the Board has yet to grant Mylan’s and Patent Owner’s Joint Motion to Terminate. Second, joinder promotes efficiency. Should the Board deny Argentum’s Motion for Joinder and opt to institute Argentum’s petition as a novel IPR, the Board must then restart the review process, which would duplicate past efforts. By granting Argentum’s joinder to Mylan’s pending IPR, the Board will ensure that time and resources will not be wasted by redoing the review of the same ground and analysis. Finally, public policy weighs in favor of joinder—restarting the process by instituting Argentum’s IPR as new would only serve to delay the ultimate determination of the patentability of the challenged claims.

This Motion for Joinder is timely under 37 C.F.R. §§ 42.22 and 42.122(b), as it is submitted no later than one month after June 12, 2017, the date on which the Mylan IPR was instituted.

II. BACKGROUND

On November 22, 2016, Mylan filed a Petition for *inter partes* review challenging claims 1-12 of United States Patent No. 6,943,166 (the “166 patent”), which was assigned Case No. IPR2017-00323. On June 12, 2017, the Board instituted review of claims 1-12 on the following ground:

- (1) Claims 1-12 are unpatentable under 35 U.S.C. § 103 as obvious over

'675 PCT (Daugan) in view of the Sildenafil NDA and FDA Guideline.

The accompanying Petition filed by Argentum presents only the identical ground on which the Mylan IPR was instituted.

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 Mylan IPR is appropriate.

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