

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC
Petitioner

v.

ICOS CORPORATION
Patent Owner

IPR2017-01762
Patent No. 6,943,166

**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION FOR
JOINDER**

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I. INTRODUCTION

Argentum Pharmaceuticals LLC’s (“Argentum”) motion for joinder to IPR2017-00323 (“the Mylan IPR”), should be denied as it fails to meet the burden of showing that joinder is appropriate. 37 C.F.R. § 42.20(c). To the contrary, joinder of Argentum will needlessly complicate and extend the Mylan IPR that Mylan and Patent Owner (ICOS Corp.) have already moved to terminate—contravening the Board’s charge to resolve “*every proceeding*” in a “just, speedy, and inexpensive” manner. 37 C.F.R. §§ 42.1(b) (emphasis added).

Argentum’s efficiency argument is based in part on its reliance on the expert declarations from the Mylan IPR. But because Argentum admittedly lacks control over Mylan’s experts, Patent Owner will be unable conduct routine cross-examination and those expert declarations will be inadmissible hearsay. Given its reliance on admittedly unavailable experts, Argentum’s Petition should not be instituted. But if instituted and joined, Patent Owner will be prejudiced by their unavailability and the proceedings will be needlessly complicated. Argentum’s introduction of its own additional experts demonstrates that its evidence is not “identical” to the Mylan IPR and joinder will add complexity, not simplicity. Argentum’s argument that joinder will avoid “duplicate” efforts by the Board ignores that, even with joinder, the Board still needs to consider the substance of Argentum’s petition and Patent Owner’s preliminary response thereto. *See* 35

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