

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PAR PHARMACEUTICAL, INC.,
Petitioner,

v.

HORIZON THERAPEUTICS, LLC,
Patent Owner.

Case No.: IPR2017-01767
U.S. Patent No. 9,254,278

**PETITIONER'S MOTION TO ACCEPT FILING OF PETITIONER'S
REPLY TO PATENT OWNER'S RESPONSE TO THE PETITION
ON AUGUST 16, 2018 UNDER 37 C.F.R. § 42.6(b)**

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*Petitioner’s Motion to Accept Filing of Petitioner’s Reply
to Patent Owner Response to the Petition on August 16, 2018*

TABLE OF CONTENTS

I. Introduction.....1

II. Statement of Material Facts.....1

III. Relief Requested.....2

IV. Statement of the Reasons for Relief Requested2

V. Conclusion4

*Petitioner's Motion to Accept Filing of Petitioner's Reply
to Patent Owner Response to the Petition on August 16, 2018*

I. INTRODUCTION

Petitioner Par Pharmaceutical, Inc. (“Par”) respectfully requests a filing date of August 16, 2018 for its Reply to the Patent Owner’s Response to the Petition in this proceeding. As laid out below, Par filed its Reply on August 16, 2018 using alternate means directed by the Patent Trial and Appeal Board (“PTAB”), because the PTAB’s End to End (“E2E”) system was offline that entire day.

Par herewith submits along with this motion its Reply and accompanying exhibits¹ that it served on Patent Owner Horizon Therapeutics, LLC (“Horizon”) on August 16, 2018 following the instructions provided in Question A2 of the PTAB E2E Frequently Asked Questions (*available at* <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/ptab-e2e-frequently-asked-questions>).

II. STATEMENT OF MATERIAL FACTS

On August 16, 2018, Par filed its Reply using alternate means directed by the PTAB, because the E2E system was offline that entire day. (EX1029, ¶ 4.) Par contacted the Board for guidance in how to proceed and confirmed that it should

¹ As instructed by the Board, Par has filed on E2E a version of EX1028 that corrects a “μ” symbol that became corrupted during finalizing of the exhibit, which came to Par’s attention on August 20, 2018. (EX1029, ¶¶ 8-10; EX1032.)

*Petitioner's Motion to Accept Filing of Petitioner's Reply
to Patent Owner Response to the Petition on August 16, 2018*

follow the instructions provided at Question A2 of the PTAB E2E Frequently Asked Questions (*available at* <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/ptab-e2e-frequently-asked-questions>).

(*Id.*, ¶ 5.)

Following these instructions, Par served by email its Reply and accompanying exhibits on counsel for Horizon. (*Id.*, ¶ 6; EX1030.) Par also notified the Board by email, with Horizon's counsel copied, that it had served Horizon with those documents. (EX1029, ¶ 7; EX1031.)

Par became aware on August 21, 2018 that the E2E system's functionality was restored. (EX1029, ¶ 11.) Par now concurrently submits herewith to the E2E system the current motion under 37 C.F.R. § 42.6(b), Par's Reply, the exhibits to Par's Reply, Par's Updated Exhibit List, and an affidavit (EX1029) attesting to the facts outlined above.

III. RELIEF REQUESTED

Par requests that the Board deem filed and accepted, as of August 16, 2018, Par's Reply being submitted herewith to the E2E system.

IV. STATEMENT OF THE REASONS FOR RELIEF REQUESTED

Per the instructions provided at Question A2, “[i]f PTAB E2E is unavailable during normal business hours or other unscheduled outage periods, . . . documents . . . may be served on opposing counsel via email, and the Board notified of the

***Petitioner's Motion to Accept Filing of Petitioner's Reply
to Patent Owner Response to the Petition on August 16, 2018***

service by email copying opposing counsel.” (see <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/ptab-e2e-frequently-asked-questions>.) Documents served in this manner “must be followed by a later-filed motion requesting acceptance [sic] of the submission once PTAB E2E is available.” (*Id.*) And “[t]he . . . document will be accorded the date on the certificate of service as the identified filing date.” (*Id.* (citing 37 C.F.R. § 42.6(b).))

As set forth above, Par complied with these instructions by (1) serving Par’s Reply on Horizon on August 16, 2018 (EX1030); (2) providing the Board with notice of Par’s service of its Reply (EX1031); and (3) electronically filing the instant motion concurrently with Par’s Reply now that the E2E system’s functionality has been restored. Par, therefore, requests that the Board accept the submission of Par’s Reply and accord it a filing date of August 16, 2018, as noted on the certificate of service of Par’s Reply.

Further, because the E2E system is designed to automatically assign a filing date to a submission based on when the submission is entered into E2E, Par also moves the Board to correct the E2E system indication of filing date associated with the August 16, 2018 Reply from the filing date reflected in the E2E system to its actual filing date of August 16, 2018, which is the date on which Par complied with the Board’s requirements for filing provided in Question A2.

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