

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS INC.,  
Petitioner,

v.

POZEN INC. and HORIZON PHARMA USA, INC.,  
Patent Owners.

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Case IPR2017-01995  
Patent 9,220,698

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**PATENT OWNERS POZEN INC. AND HORIZON PHARMA USA, INC.'S  
REQUEST FOR REHEARING OF THE DECISION TO INSTITUTE  
TRIAL PURSUANT TO 37 C.F.R. § 42.71(c), (d)**

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Pursuant to 37 C.F.R. § 42.71(c) and (d), Horizon Pharma USA, Inc. (“Horizon”) and Pozen Inc. (“Pozen”) (collectively, “Patent Owner”) respectfully request a rehearing in response to the Decision, Institution of *Inter Partes* Review of U.S. Patent No. 9,220,698 (“Decision”) (Paper 18).

## **I. INTRODUCTION AND STATEMENT OF RELIEF REQUESTED**

On March 8, 2018, the Board authorized institution of this *inter partes* review of claims 1-7 of U.S. Patent No. 9,220,698 (“the ’698 patent”) on the three grounds presented in the petition. (Decision at 29.) Patent Owner respectfully requests reconsideration of the Board’s decision to institute on all three grounds because the Petition was filed more than a year after Mylan first asserted counterclaims related to the ’698 patent in litigation and more than a year after Horizon and Pozen responded to those counterclaims. The Board, however, was led astray by Petitioner’s argument that the underlying district court matter was dismissed without prejudice, when, in fact, Mylan’s claims were consolidated with a later-filed action. (Decision at 13.)

The Petition is time barred under both 35 U.S.C. § 315(a)(1) and § 315(b) because Petitioner first asserted invalidity and non-infringement of the ’698 patent in counterclaims filed more than a year before filing the instant Petition. (Patent

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