

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 Owner.

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Cases<sup>1</sup>  
IPR2017-01995<sup>2</sup> (Patent 9,220,698 B2)  
IPR2018-00272 (Patent 9,393,208 B2)

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Before TONI R. SCHEINER and MICHELLE N. ANKENBRAND,  
*Administrative Patent Judges.*

ANKENBRAND, *Administrative Patent Judge.*

ORDER  
Conduct of the Proceeding  
Suspending Deadlines Due to Suggestion of Bankruptcy  
*37 C.F.R. § 42.5*

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<sup>1</sup> This order applies to both cases. The parties are not authorized to use this style heading in subsequent papers without prior Board authorization.

<sup>2</sup> Petitioner Dr. Reddy's Laboratories, Inc., from IPR2018-000894, has been joined as a Petitioner to this proceeding.

IPR2017-01995 (Patent 9,220,698 B2)

IPR2018-00272 (Patent 9,393,208 B2)

On August 28, 2018, Patent Owner Pozen Inc. (“Pozen”) filed a Suggestion of Bankruptcy (the “Suggestion”) in each of the above-referenced proceedings. Paper 50.<sup>3,4</sup> According to the Suggestion, Pozen filed for bankruptcy under Chapter 11 on August 10, 2018. *Id.* at 2. On August 29, 2018, counsel for Petitioner Mylan Pharmaceuticals Inc. (“Mylan”) requested a conference call to address the impact of the Suggestion on the schedule in these proceedings. Ex. 3002. In particular, Mylan noted that a deposition was scheduled to proceed on August 31, 2018, and that the deadline for the Petitioners’ Reply is September 7, 2018. *Id.*

On August 30, 2018, Judges Ankenbrand and Scheiner held a conference call with counsel for the parties and bankruptcy counsel for Pozen to discuss the Suggestion and its impact on these proceedings.<sup>5</sup> During the conference call, Pozen’s bankruptcy counsel contended that the automatic stay under 11 U.S.C. § 362 applies to these proceedings. *See also* Paper 50, 2 (asserting that the proceeding is stayed as of the date of Pozen’s bankruptcy petition). Counsel for Mylan and counsel for Dr. Reddy’s Laboratories, Inc. did not agree that the automatic stay applies to these proceedings, but were amenable to a two-week stay of the proceedings to determine how to address Pozen’s contentions regarding the automatic stay.

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<sup>3</sup> Pozen’s Suggestion is substantively the same in each proceeding. We cite to the Suggestion filed in IPR2017-01995.

<sup>4</sup> The challenged patents also are assigned to Horizon Inc. (“Horizon”). The Suggestion applies only to Pozen.

<sup>5</sup> Although the Suggestion references a voluntary petition for relief under Chapter 11, *see, e.g.*, Paper 50, 2, Pozen did not file the petition in the docket of these proceedings. During the course of the conference call, we directed Pozen to file a copy of the bankruptcy petition as an exhibit in each proceeding.

IPR2017-01995 (Patent 9,220,698 B2)

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Given the parties' disagreement regarding whether the automatic stay applies to these proceedings—a disagreement that, in our view, is best addressed in the bankruptcy court—we determined that the appropriate course of action was to suspend all deadlines in these proceedings until further notice.

In view of the foregoing, it is

ORDERED that all deadlines in these proceedings are suspended until further notice;

FURTHER ORDERED that Pozen shall file a copy of the bankruptcy petition as an exhibit in these proceedings;

FURTHER ORDERED that Pozen shall provide the Board with a status report on the bankruptcy proceedings by email on or before September 28, 2018, and every thirty (30) days thereafter until ordered otherwise in these proceedings; and

FURTHER ORDERED that Mylan (on behalf of Petitioners) shall file as exhibits in these proceedings any filings in the bankruptcy court that any of the parties to these proceedings, any party to the bankruptcy proceeding, or any third party makes, as well as any opinions or orders of the bankruptcy court related to whether the automatic stay applies to these proceedings or whether relief is granted from such a stay. Mylan shall make such filings in these proceedings no more than five (5) business days after the filings are made, or the opinions or orders are entered, in the bankruptcy court.

IPR2017-01995 (Patent 9,220,698 B2)

IPR2018-00272 (Patent 9,393,208 B2)

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