

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS INC.,
Petitioner,

v.

COSMO TECHNOLOGIES LIMITED,
Patent Owner.

U.S. Patent No. 9,320,716 to Villa et al.

Issue Date: April 26, 2016

Title: Controlled Release and Taste Masking Oral Pharmaceutical Compositions

Inter Partes Review No.: IPR2018-00080

JOINT MOTION TO TERMINATE PROCEEDINGS

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U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

I. Statement of Relief Requested

Pursuant to 35 U.S.C. § 317(a), 37 C.F.R. § 42.72, and 37 C.F.R. § 42.74, and the Board's authorization email dated April 13, 2018, Petitioner Argentum Pharmaceuticals, Inc. and Patent Owner Cosmo Technologies, Inc. jointly move that the Board terminate the above captioned *inter partes* review (IPR) proceeding in its entirety as a result of settlement between Petitioner and Patent Owner.

Petitioner represents that it will no longer participate in this *inter partes* review and will file no further papers.

The parties are filing concurrently herewith a separate request that the settlement agreement being filed herewith be treated as business confidential information and be kept separate from the files of the involved patent, pursuant to 37 C.F.R. § 42.74(c).

II. Statement of Facts

Petitioner filed this IPR petition on October 20, 2018. On January 31, 2018, Patent Owner filed its Preliminary Response under 37 C.F.R. § 42.107. The Board has yet to issue a decision instituting (or denying institution) *inter partes* review.

On April 19, 2018, Petitioner and Patent Owner entered into a settlement agreement. *See* Ex. 2043 (Confidential). Under the terms of the settlement agreement, Petitioner agreed to terminate IPR No. IPR2018-00080.

III. Related District Court Litigation

U.S. Patent No. 9,320,716 (the "716 patent") is currently the subject of the following ongoing litigations: *Cosmo Technologies Limited, Valeant Pharmaceuticals International, and Valeant Pharmaceuticals Luxembourg S.A. R.L. v Lupin Ltd. and Lupin Pharmaceuticals, Inc.*, 15-cv-00669 (D. Del.), which is stayed, and *Cosmo Technologies Limited, Valeant Pharmaceuticals International, and Valeant Pharmaceuticals Luxembourg S.A. R.L. v Sun Pharmaceutical Industries, Ltd., Sun Pharma Global FZE, and Sun Pharmaceutical Industries, Inc.*,

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15-cv-00669 (D.N.J.). The '716 patent was also the subject of *Cosmo Technologies Limited, Valeant Pharmaceuticals International, and Valeant Pharmaceuticals Luxembourg S.A. R.L. v. Mylan Pharmaceuticals, Inc.*, 16-cv-00152 (D. Del.). The parties, however, have settled that litigation out of court.

IV. Related *Inter Partes* Review

Prior to Petitioner's filing of IPR No. IPR2018-00080 concerning the '716 patent, Mylan Pharmaceuticals, Inc. ("Mylan") filed IPR No. IPR-01035 concerning the '716 patent. Mylan also filed IPR No. IPR2017-01034 concerning U.S. Pat. No. 8,784,888. The '888 patent is related to the '716 patent. The Board granted the parties' joint motion to terminate IPR No. IPR2017-01034 on September 20, 2017, and granted the parties' joint motion to terminate IPR No. IPR2017-0135 on January 17, 2018.

V. Argument

Section 317(a) provides: "An inter partes review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed." 35 U.S.C. § 317(a). It further provides: "If no petitioner remains in the inter partes review, the Office may terminate the review or proceed to a final written decision under section 318(a)." *Id.*

Similarly, 37 C.F.R. § 42.72 provides that "[t]he Board may terminate a trial without rendering a final written decision, where appropriate, including where the trial is consolidated with another proceeding or pursuant to a joint request under 35 U.S.C. 317(a)."

The Trial Practice Guide additionally counsels that "[t]here are strong public policy reasons to favor settlement between the parties to proceeding" and that the Board "expects that a proceeding will terminate after the filing of a settlement agreement, unless the Board has already decided the merits of the proceeding. 35

U.S.C. 317(a), as amended, and 35 U.S.C. 327.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012).

Petitioner represents that it will no longer participate in this *inter partes* review and will file no further papers.

A. The Board Should Terminate This IPR Proceeding In Its Entirety

As noted in the Statement of Facts, the Board has yet to render an institution decision in this matter. Accordingly, the Board has not opined upon the merits of the petition whatsoever. Thus, the Board should terminate the proceedings with respect to Argentum, the sole Petitioner in this proceeding. Moreover, because no petitioner remains after termination with respect to Argentum, the Board should exercise its discretion and terminate review in its entirety under 35 U.S.C. § 317 and 37 C.F.R. §§ 42.72, 42.74.

In the past, the Board has terminated the entire proceedings based on joint motions to terminate even after the merits had been fully briefed and the matter was ready for oral argument, or even after oral argument. *See Toyota Motor Corp. v. Blitzsafe Tex. LLC*, IPR2016-00421, Paper 28 (Feb. 21, 2017) (granting motion to terminate even after all substantive papers were filed, “particularly in light of the fact that a final written decision is not due until more than four months from now”); *Plaid Techs., Inc. v. Yodlee, Inc.*, IPR2016-00273, Paper 29 (Feb. 8, 2017) (granting motion to terminate because “the parties' joint motions to terminate were filed prior to the oral hearings in these cases”); *Apex v. Resmed*, IPR201-00512, Paper 39 (Sept. 12, 2014) (granting joint motion to terminate after the parties had fully briefed the matter); *Rackspace Hosting, Inc. v. Clouding IP, LLC*, CBM2014-00034, Paper 28 (Dec. 9, 2014) (granting motion to terminate after close of evidentiary record and less than ten days before trial); *Volution v. Versata Software*, CMB2013-00018, Paper 52 (June 17, 2014) (granting motion to terminate after oral argument).

In contrast to these examples—examples in which the Board had instituted *inter partes* review, had received full briefing of all issues, and in some cases had even heard oral argument on the same yet nonetheless terminated the proceedings upon the filing of a joint motion for termination—the Board has not even issued a decision instituting (or denying institution) of *inter partes* review. Accordingly, termination of the entire proceeding at this nascent stage would save the Board significant administrative resources. Termination would also further the AIA’s purpose of providing an efficient and less costly alternative forum for patent dispute and its encouragement for settlement. Additionally, termination of the entire proceedings would also save the parties costs related to this *inter partes* review.

The parties understand that if the Board terminates this IPR with respect to Petitioner under 35 U.S.C. § 317(a), no estoppel under § 315(e) will attach to Petitioner, or Petitioner’s privy, based on Petitioner seeking this IPR. The parties also understand that if the Board terminates this IPR with respect to Petitioner before a final written decision on patentability, no estoppel will attach to Petitioner, or Petitioner’s privy, under 37 C.F.R. § 42.73(d)(1). The parties understand that if the Board terminates this IPR before a final written decision on patentability, no preclusion will attach to Patent Owner under 37 C.F.R. § 42.73(d)(3).

B. Written Settlement Statement

Pursuant to 37 C.F.R. § 42.74(c), the parties are filing herewith as Exhibit 2043 a true copy of the settlement agreement entered between the parties on April 19, 2018. The settlement agreement was entered into in contemplation of termination of this proceeding.

VI. Conclusion

Petitioner and Patent Owner respectfully request that the Board grant the parties’ Joint Motion to Terminate this proceeding in its entirety and grant the

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