

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DR. REDDY'S LABORATORIES, INC.,
Petitioner,

v.

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

Case No. IPR2018-00894
Patent No. 9,220,698

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

I. STATEMENT OF FACTS

On April 6, 2018, Petitioner, Dr. Reddy's Laboratories, Inc. ("DRL"), filed an IPR petition and a motion to join its petition to IPR2017-01995 ("the Mylan IPR"). The Board granted the Mylan IPR on March 8, 2018 and issued a Scheduling Order setting November 15, 2018 as the date for oral argument.

II. ARGUMENT

A. DRL's Petition is time-barred

Pursuant to 35 U.S.C. § 315(b), "[a]n inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent."

Here, DRL was served with a complaint alleging infringement of the '698 patent on August 25, 2016. 7 months after the deadline to file an *inter partes* review petition, and 19 months since it was served with a complaint, DRL now requests joinder to circumvent the time-bar on its belated petition. While 37 CFR § 42.122 allows for a petition that is accompanied by a request for joinder to circumvent the

one-year time bar, DRL unnecessary delayed filing its petition well past the one year bar.¹

DRL masks its gamesmanship as “promot[ing] efficient and consistent resolution of the invalidity grounds at issue.” On the contrary, allowing parties to file belated petitions accompanied by motions for joinder well after the one-year time bar creates inefficiencies, as the Board and the Patent Owners are held in indefinite limbo as to whether the statute of limitations has tolled on validity challenges.

Here, DRL had plenty of time and opportunity to file its own Petition, yet chose to wait until long after it was sued on the '698 patent. In the related district court action, DRL served invalidity contentions more than one year ago, in February 2017. Expert reports have been exchanged, and expert depositions are set to begin. DRL should not be allowed to game the system, waiting until the last possible moment to file a challenge to the patent in this forum. Such behavior runs afoul of the intent and purpose of the *inter partes* review.

B. DRL Should Be Barred From Relying On New Experts

There are significant differences between DRL’s petition and Mylan’s petition

¹ The Mylan IPR that Petitioner seeks to join is, itself, time barred. *See* IPR2017-01995, Paper 24.

in that DRL's petition includes declarations from two new experts, Dr. Meyer Solny and Dr. Richard Bergstrom rather than relying on the experts in the Mylan IPR. These new expert declarations introduce new arguments. This fact alone supports denial of DRL's motion for joinder. *See* IPR2016-01332 Paper 21 ("Granting joinder in view of [Petitioner's] two different declarations and new evidence would add an additional dimension to the substantive issues."). Although DRL subsequently informed Patent Owner and the Board that "Mylan has agreed to share its experts with DRL," DRL has made no representation that it would withdraw its own expert declarations or otherwise agree to not rely on the direct testimony of its experts in any way.

If the Board grants DRL's motion for joinder, the expert declarations of DRL's experts should be expunged from the record and DRL should be precluded from relying on such new evidence.

III. CONCLUSION

For the foregoing reasons, Patent Owners respectfully request that Petitioner's Motion for Joinder be denied. In the alternative, if the Board finds the Motion for Joinder to be proper, Patent Owners respectfully request the following conditions:

1. DRL agrees to rely solely on Mylan's expert;
2. DRL agrees to consolidated briefing subject to the word count limits for a single party except for motions that involve only DRL;

3. DRL agrees that cross-examination of Patent Owner's witnesses will occur within the timeframe that the rules allot for one party; and
4. DRL agrees that Mylan will conduct the oral argument.

Dated: May 9, 2018

Respectfully submitted,

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