

No. 18-1638

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

SAINT REGIS MOHAWK TRIBE and ALLERGAN, INC.,
Appellants,

v.

MYLAN PHARMACEUTICALS, INC., TEVA PHARMACEUTICALS USA, INC., and
AKORN, INC.,
Appellees.

Appeal from: Patent and Trademark Office - Patent Trial and Appeal Board
in *Inter Partes* Review No. IPR2016-01127, IPR2016-01128, IPR2016-01129,
IPR2016-01130, IPR2016-01131, IPR2016-01132, IPR2017-00576,
IPR2017-00578, IPR2017-00579, IPR2017-00583, IPR2017-00585,
IPR2017-00586, IPR2017-00594, IPR2017-00596, IPR2017-00598,
IPR2017-00599, IPR2017-00600, IPR2017-00601.

**APPELLANTS' MOTION FOR STAY PENDING REVIEW;
IMMEDIATE ACTION REQUESTED**

Michael W. Shore
Alfonso Garcia Chan
Christopher L. Evans
Joseph F. DePumpo
SHORE CHAN DEPUMPO LLP
901 Main Street, Suite 3300
Dallas, TX 75202
Tel: (214) 593-9110
Fax: (214)593-9111
mshore@shorechan.com
achan@shorechan.com
cevans@shorechan.com
jdepumpo@shorechan.com

Jonathan Massey
MASSEY & GAIL LLP
1325 G. Street, NW, Suite 500
Washington, D.C. 20005
Tel.: (202) 652-4511
Fax: (312) 379-0467
jmassey@masseygail.com

Counsel for Appellant
Allergan, Inc.

Marsha Schmidt
Attorney at Law
14928 Perrywood Drive
Burtonsville, MD 20866
Tel: (301) 949-5176
marsha@mkschmidtlaw.com

Counsel for Appellant
Saint Regis Mohawk Tribe

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. BACKGROUND 2

III. STATEMENT PURSUANT TO FED. CIR. R. 18(d)..... 3

IV. LEGAL STANDARD GOVERNING THE STAY IN THIS CASE..... 6

V. ARGUMENT 7

 A. An Appeal Based Upon Sovereign Immunity Divests the Board of Jurisdiction and This Court May Order that the Underlying Action Be Stayed..... 7

 B. The Board’s Designation of Allergan as an “Effective Patent Owner” Cannot be Sustained Under the Law and Cannot be Used to Avoid the Divestiture of Board Jurisdiction or the Tribe’s Immunity. 11

 C. As Part of this Appeal, This Court Has Pendent Jurisdiction Over Allergan’s Appeal. 14

 D. In the Alternative, A Stay Would Also Be Warranted Under Rule 18. 18

 1. The Balance of Harms and Public Interest Warrant a Stay..... 18

 2. The Tribe Can Show Probable Success on the Merits. 21

VI. CONCLUSION 25

VII. STATEMENT OF OPPOSITION 28

VIII. CERTIFICIATE OF INTEREST..... 29
PROOF OF SERVICE 30
CERTIFICATE OF COMPLIANCE WITH RULE 27(d)(2)(A) 31

TABLE OF AUTHORITIES

CASES:

<i>A123 Sys. Inc. v. Hydro-Quebec</i> , 626 F.3d 1213 (Fed. Cir. 2010).....	12
<i>Allergan, Inc. v. Teva Pharm. USA, Inc.</i> , No. 2:15-CV-1455-WCB, 2017 WL 4803941 (E.D. Tex. Oct. 16, 2017).....	19
<i>Am. Library Ass’n v. FCC</i> , 406 F.3d 689 (D.C. Cir. 2005).....	13, 14
<i>Apostol v. Gallion</i> , 870 F.2d 1335 (7th Cir. 1989).....	6, 8, 9, 10
<i>Barnhart v. Peabody Coal</i> , 537 U.S. 149 (2003)	20
<i>Bassett v. Mashantucket Pequot Tribe</i> , 204 F.3d 343 (2d Cir. 2000).....	23
<i>Brock v. Pierce County</i> , 476 U.S. 253 (1986)	20
<i>Burlington Northern and Santa Fe Railway Co. v. Vaughn</i> , 509 F.3d 1085 (9th Cir. 2007).....	9, 17
<i>Chehazeh v. Att’y Gen. of U.S.</i> , 666 F.3d 118 (3d Cir. 2012).....	9
<i>Coach Ritchie v. Simpson</i> , 170 F.3d 1092 (Fed. Cir. 1999).....	13
<i>Cohen v. Beneficial Industrial Loan Corp.</i> , 337 U.S. 541 (1949)	7
<i>Enter. Mgmt. Consultants Inc. v. United States</i> , 883 F.2d 890 (10th Cir. 1989).....	16

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.