

**United States Court of Appeals
for the Federal Circuit**

SAINT REGIS MOHAWK TRIBE, ALLERGAN, INC.,
Appellants

v.

**MYLAN PHARMACEUTICAL, INC., TEVA PHARMA-
CEUTICALS USA, INC., AND AKORN, INC,**
Appellees

Nos. 18-1638, 18-1639, 18-1640, 18-1641, 18-1642, 18-1643

Appeals from the U.S. Patent and Trademark Office, Patent Trial
and Appeal Board in Nos. 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

**BRIEF OF THE STATES OF INDIANA, HAWAII, ILLINOIS,
MASSACHUSETTS, TEXAS, UTAH, AND VIRGINIA AS
AMICI CURIAE IN SUPPORT OF EN BANC REHEARING**

Office of the Attorney General
302 West Washington Street
IGCS 5th Floor
Indianapolis, Indiana 46204
(317) 232-6255
Tom.Fisher@atg.in.gov

CURTIS T. HILL, JR.
Attorney General of Indiana
THOMAS M. FISHER
Solicitor General*
KIAN J. HUDSON
Deputy Attorney General

Counsel for Amici States
Additional counsel listed with signature block

CERTIFICATE OF INTEREST

Counsel for *Amicus Curiae* certifies the following:

1. The full names of every party represented by me are:
 - The States of Indiana, Hawaii, Illinois, Massachusetts, Texas, Utah, and Virginia
2. The names of the real parties in interest represented by me are:
 - The States of Indiana, Hawaii, Illinois, Massachusetts, Texas, Utah, and Virginia
3. All parent corporations and any publicly held companies that own 10 percent of the stock of the parties represented by me are:
 - None. The *amicus curiae* are sovereign States.
4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this Court (and who have not or will not enter an appearance in this case) are:
 - None.
5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal:
 - *Allergan, Inc. v. Teva Pharmaceuticals USA Inc.*, No. 2018-1130 (Fed. Cir.)
 - *Regents of the University of Minnesota v. LSI Corporation*, No. 2018-1559 (Fed. Cir.)
 - *Allergan, Inc. v. Deva Holding A.S.*, No. 2:16-cv-1447 (E.D. Tex.)
 - *Regents of the University of Minnesota v. LSI Corporation*, No. 5:18-cv-00821 (N.D. Cal.)

- *Regents of the University of Minnesota v. Gilead Sciences, Inc.*, No. 3:17-cv-06056 (N.D. Cal.)
- *Regents of the University of Minnesota v. AT&T Mobility LLC*, No. 0:14-cv-04666 (D. Minn.)
- *Regents of the University of Minnesota v. Sprint Solutions, Inc.*, No. 0:14-cv-04669 (D. Minn.)
- *Regents of the University of Minnesota v. T-Mobile USA, Inc.*, No. 0:14-cv-04671 (D. Minn.)
- *Regents of the University of Minnesota v. Cellco Partnership*, No. 0:14-cv-04672 (D. Minn.)
- *Gilead Sciences, Inc. v. Regents of the University of Minnesota*, No. IPR2017-01753 (P.T.A.B.)
- *Gilead Sciences, Inc. v. Regents of the University of Minnesota*, No. IPR2017-01712 (P.T.A.B.)
- *Gilead Sciences, Inc. v. Regents of the University of Minnesota*, No. IPR2017-02004 (P.T.A.B.)
- *Gilead Sciences, Inc. v. Regents of the University of Minnesota*, No. IPR2017-02005 (P.T.A.B.)
- *Ericsson Inc. v. Regents of the University of Minnesota*, No. IPR2017-01186 (P.T.A.B.)
- *Ericsson Inc. v. Regents of the University of Minnesota*, No. IPR2017-01197 (P.T.A.B.)
- *Ericsson Inc. v. Regents of the University of Minnesota*, No. IPR2017-01200 (P.T.A.B.)
- *Ericsson Inc. v. Regents of the University of Minnesota*, No. IPR2017-01213 (P.T.A.B.)
- *Ericsson Inc. v. Regents of the University of Minnesota*, No. IPR2017-01214 (P.T.A.B.)

- *Ericsson Inc. v. Regents of the University of Minnesota*,
No. IPR2017-01219 (P.T.A.B.)
- *LSI Corporation v. Regents of the University of Minnesota*,
No. IPR2017-01068 (P.T.A.B.)

Date: September 4, 2018

s/ Thomas M. Fisher

TABLE OF CONTENTS

CERTIFICATE OF INTEREST	i
TABLE OF AUTHORITIES	v
AMICI'S STATEMENT OF IDENTITY AND INTEREST	1
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. Eliminating State Sovereign Immunity in <i>Inter Partes</i> Review Would Seriously Harm States.....	5
A. Permitting private parties to force States into IPR would offend States' sovereign dignity.....	5
B. Excluding sovereign immunity from IPR would jeopardize the substantial, publicly beneficial revenues generated by public universities' intellectual property.....	6
II. The Panel's Decision Misapplies <i>FMC</i>	8
A. <i>Inter partes</i> review is not a proceeding brought by the federal government	9
B. The existence of sovereign immunity does not turn on minor procedural similarities	13
CONCLUSION	15
CERTIFICATE OF COMPLIANCE.....	17
CERTIFICATE OF SERVICE.....	18

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.