

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

MICROSOFT CORPORATION

Petitioner,

v.

SAINT REGIS MOHAWK TRIBE,

Patent Owner.

---

IPR2018-01607

Patent 7,620,800 B2

---

**PETITIONER MICROSOFT CORPORATION'S OPPOSITION TO  
PATENT OWNER'S MOTION TO EXTEND ITS PRELIMINARY  
RESPONSE DEADLINE UNTIL AFTER THE RESOLUTION  
OF ITS PETITION FOR WRIT OF CERTIORARI CONCERNING  
WHETHER SOVEREIGN IMMUNITY MAY BE ASSERTED  
IN *INTER PARTES* REVIEWS**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. FACTUAL BACKGROUND.....1

III. ARGUMENT .....2

    A. SRMT Has Shown No Basis For A Stay .....2

        1. SRMT’s Sovereign Immunity Argument Has Been  
           Heard and Rejected .....2

        2. There is No Good Cause For a Stay.....4

        3. SRMT’s Mischaracterizations of the Record Do Not  
           Support a Stay .....6

    B. The Federal Circuit’s Decision in *Mylan* is Controlling .....8

    C. SRMT has Waived the Right to Assert a Defense of  
        Sovereign Immunity .....8

CONCLUSION .....9

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>DietGoal Innovations LLC v. Chipotle Mexican Grill</i> , 70 F. Supp. 3d 808, 811-12 (E.D. Tex. 2014) (Bryson, J.) .....	5
<i>LSI Corp. v. Regents of the Univ. of Minn.</i> IPR2017-01068, Paper 19, PTAB, Dec. 19, 2017 .....	8
<i>Mylan Pharm., Inc. v. Allergan, Inc.</i> IPR2016-01127, Paper 129, PTAB, Feb. 23, 2018 .....	3
<i>Mylan Pharm., Inc. v. Allergan, Inc.</i> IPR2016-01127, Paper 137, PTAB, Mar. 22, 2018.....	1
<i>Mylan Pharm., Inc. v. Allergan, Inc.</i> IPR2016-01127, Paper 142, PTAB, Nov. 30, 2018 .....	4
<i>Mylan Pharm., Inc. v. Allergan, Inc.</i> IPR2016-01127, Paper 81, PTAB, Sept. 22, 2017 .....	1
<i>Saint Regis Mohawk Tribe v. Mylan Pharm. Inc.</i> , 896 F.3d 1322 (Fed. Cir. 2018) .....	1
<i>SRC Labs, LLC v. Microsoft Corp.</i> , No. 1:17cv-01172-LO-JFA, ECF No. 1 (E.D. Va. Oct. 18, 2017).....	2, 9
<i>SRC Labs, LLC v. Microsoft Corp.</i> , No. 2:18-cv-00321-JLR, ECF No. 117 (W.D. Wash. Oct. 11, 2018) .....	6
<i>Xilinx Inc., v. Saint Regis Mohawk Tribe</i> IPR2018-01395, Paper 11, PTAB, Oct. 24, 2018.....	3, 7
<b>Other Authorities</b>	
37 C.F.R. § 42.1(b) .....	6
37 C.F.R. § 42.5(c)(2).....	8
Fed. R. App. P. 41(d)(1).....	4, 8

IPR2018-01607  
U.S. Patent 7,620,800

Opposition to Mot. to Extend Prelim. Resp. Deadline

*The Supreme Court, 2017 Term – The Statistics*  
132 HARV. L. REV. 447 (2018).....5

## I. INTRODUCTION

The request of Saint Regis Mohawk Tribe (“SRMT”) to delay these proceedings should be denied because it has already been decided that SRMT is not immune from IPR proceedings, and SRMT has waived any argument that it could be immune by asserting the patents at issue here in Federal Court. SRMT therefore cannot show any good cause to depart from the ordinary rules governing IPRs, or any likelihood of harm from complying with those rules.

## II. FACTUAL BACKGROUND

On September 8, 2017, Allergan, Inc. transferred numerous prescription drug patents to SRMT in an effort to shield the patents from IPR proceedings. IPR2016-01127, Paper 81 at 7, EX. 2086, EX. 2103. In that case, the Board held that IPR proceedings are administrative enforcement actions that do not invoke the right of sovereign immunity, and ordered that the case proceed. IPR2016-01127, Paper 137. SRMT appealed, but the Federal Circuit affirmed, holding that sovereign immunity “does not extend to actions brought by the federal government,” that an “IPR is more like an agency enforcement action than a civil suit brought by a private party,” and that therefore SRMT may not rely on sovereign immunity to shield itself from IPR proceedings. *Saint Regis Mohawk Tribe v. Mylan Pharm. Inc.*, 896 F.3d 1322, 1325, 1327-28 (Fed. Cir. 2018) (“*Mylan*”). On October 28, 2018, SRMT’s petition for rehearing *en banc* in that

# 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.