IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., Petitioner,

v.

ALMIRALL, LLC., Patent Owner.

U.S. Patent No. 9,517,219 to Warner *et al*.

Issue Date: December 13, 2016

Title: Topical dapsone and dapsone/adapalene compositions and methods for use thereof *Inter Partes* Review No.: IPR2019-01095

Petitioner's Reply to Patent Owner's Preliminary Response

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TABLE OF CONTENTS

Page

I.	Contents	
II.	INTRODUCTION]
III.	INSTITUTION SHOULD NOT BE DENIED BASED ON §314(A)	2
IV.	The General Plastic Factors Do Not Support Denial of Institution Under §314(A)	3
A	. General Plastic Factor 1	2
	. General Plastic Factors 2-5	
C	. General Plastic Factors 6-7	-
V.	CONCLUSION	8

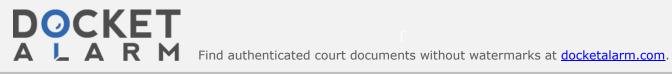


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Page	e(s)
Cases	
Abiomed, Inc. v. Maquet Cardiovascular, LLC, IPR2017-02134, Paper 7 (P.T.A.B. Apr. 16, 2018)	6
Amneal Pharmaceuticals LLC et al v. Almirall, LLC et al., IPR2019-00207, Paper 13 (P.T.A.B. Nov. 6, 2018)	1
General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha, IPR2016-01357, Paper 19 (P.T.A.B. Sept. 6, 2017)	ssim
Mylan Pharmaceuticals Inc. v. Sanofi-Aventis Deutschland GMBH, IPR2018-01680, Paper 22 (P.T.A.B. Apr. 3, 2019)	2, 3
Sawai USA, Inc. v. Biogen MA, Inc., IPR2019-00789, Paper 17 (P.T.A.B. Sept. 12, 2019)	ssim
Valve Corp. v. Electronic Scripting Prods., Inc., IPR2019-00062, -00063, -00084, Paper 11 (P.T.A.B. Apr. 2, 2019)	5
Statutes	
35 U.S.C. § 314(a)	1, 2
35 U.S.C. § 316(a)(11)	4
Regulations	
37 C.F.R. § 42.22	6
27 C E D	6



II. INTRODUCTION

Mylan Pharmaceuticals Inc. ("Mylan" or "Petitioner") filed a "me-too" or "copycat" petition seeking joinder with *Amneal Pharmaceuticals LLC et al v. Almirall, LLC et al.*, IPR2019-00207, filed November 6, 2018 and instituted May 10, 2019 ("the Amneal IPR"). *See* IPR2019-00207, Paper 13. There is no dispute that Mylan's Petition is a "me-too" or "copycat" petition. In fact, Almirall, LLC ("Almirall" or "Patent Owner") freely admits that Mylan's Petition is a "me-too" Petition. *Prelim. Resp.* at 10 ("Mylan's petition, copying Amneal's petition wordfor-word"); *id.* ("identical petition"); *id.* at 1 ("The Petitioner challenges the same claims of the same patent previously challenged by Amneal . . . in IPR2019-00207, asserting the same prior art references."). Moreover, Patent Owner filed no Opposition against Mylan's Motion for Joinder.

In its Preliminary Patent Owner Response and without citing any credible authority, Patent Owner argues that 35 U.S.C. § 314(a) and its related PTAB case law preventing a Patent Owner from being exposed to serial petitions should somehow apply to a "me-too" joinder petition. The PTAB recently rejected this very argument explaining that "there is no abuse of process where . . . a different petitioner files a 'me-too' or 'copycat'" petition in conjunction with a timely motion to join an *inter partes* review based upon the (essentially) copied petition filed by



different petitioner." Sawai USA, Inc. v. Biogen MA, Inc., IPR2019-00789, Paper 17 at 10 (P.T.A.B. Sept. 12, 2019).

III. INSTITUTION SHOULD NOT BE DENIED BASED ON §314(A)

When deciding to exercise its discretion under §314(a) and the *General Plastic* factors, the Board typically does so in the case of "follow-on" petitions that "abuse [the] review process by repeated attacks on patents." *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 17 (P.T.A.B. Sept. 6, 2017) (precedential); *Mylan Pharmaceuticals Inc. v. Sanofi-Aventis Deutschland GMBH*, IPR2018-01680, Paper 22 at 17 (P.T.A.B. Apr. 3, 2019) ("the *General Plastic* factors were articulated in the context of follow-on petitions.").

The instant petition is not a follow-on petition; it is a "me-too" or "copycat" petition filed concurrently with a Motion for Joinder with the Amneal IPR. Mylan's Petition: (1) is identical in substance to the Amneal IPR; (2) challenges the same claims of the '219 patent on the same grounds, (3) relies on substantively the same expert testimony, and (4) has no impact on the Amneal IPR schedule. *See generally*, IPR2019-01095, Paper 1; IPR2019-00789 at 11 ("[The joinder] Petition does not present any substantive ground or matter not already at issue"). And as stated in its Motion for Joinder, Mylan has also requested to serve as an understudy to Amneal. *See* IPR2019-01095, Paper 2.



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