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

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

Page

I. Contents

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

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 word-for-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.

DOCKET ALARM

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.