

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX INC.,
Petitioner

v.

REGENERON PHARMACEUTICALS, INC.,
Patent Owner

Inter Partes Review No.: IPR2022-00298

U.S. Patent No. 9,254,338 B2
Filed: July 12, 2013
Issued: February 9, 2016
Inventor: George D. Yancopoulos

Title: USE OF A VEGF ANTAGONIST TO TREAT
ANGIOGENIC EYE DISORDERS

**MOTION FOR JOINDER UNDER 35 U.S.C § 315(c),
37 C.F.R. §§ 42.22, AND 42.122(b)**

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF THE PRECISE RELIEF REQUESTED	1
II. STATEMENT OF MATERIAL FACTS	1
III. STATEMENT OF REASONS FOR RELIEF REQUESTED	2
A. Legal Standard.....	2
B. Each Factor Weighs in Favor of Granting the Motion for Joinder	3
1. Joinder with the Mylan IPR is Appropriate	3
2. Apotex Raises No New Grounds of Unpatentability.....	4
3. Joinder Would Not Affect the Schedule in the Mylan IPR	5
4. Briefing and Discovery Will Be Simplified	6
IV. THE <i>GENERAL PLASTIC</i> FACTORS PROVIDE NO REASON TO DENY INSTITUTION	7
V. CONCLUSION.....	8

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Apotex Inc. (“Apotex” or “Petitioner”) respectfully submits this Motion for Joinder, concurrently with a Petition for *inter partes* review of U.S. Patent No. 9,254,338 (“the ’338 Patent”). Apotex requests its Petition for *inter partes* review of the ’338 Patent be instituted and joined pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b) with the *inter partes* review proceeding initiated by Mylan Pharmaceuticals Inc. (“Mylan”) concerning the ’338 Patent, *Mylan Pharms. Inc. v. Regeneron Pharms., Inc.*, IPR2021-00881 (“the Mylan IPR”), which was instituted on November 10, 2021.

Apotex’s Petition is essentially a copy of the Mylan IPR Petition. It includes the identical grounds and relies on the same evidence presented in the Mylan IPR. Apotex also stipulates that if joinder is granted, it agrees to an “understudy” role and will not raise any additional issues in the joined proceeding so long as Mylan remains an active party. Joinder would thus create no additional burden for the Board, the Mylan IPR Petitioner, or Patent Owner. Nor should it impact the Mylan IPR schedule. As such, joinder will promote judicial efficiency in determining patentability of the ’338 Patent without prejudice to Patent Owner.

II. STATEMENT OF MATERIAL FACTS

On May 5, 2021, Mylan filed the Mylan IPR. On November 10, 2021, the Board instituted the proceeding.

Mylan has represented to Apotex that it will not oppose Apotex's Motion for Joinder.

This motion is timely. Under 37 C.F.R. § 42.122(b), joinder can be requested without prior authorization no later than one month after the institution date of the proceeding to which joinder is requested. This motion is being filed within one month of the Board's decision instituting trial in the Mylan IPR, thus meeting the requirements of § 42.122(b).

The present Petition is the first IPR petition filed by Apotex against the '338 Patent. The Mylan IPR Petition and the present Petition are substantively identical; they contain the same grounds, based on the same prior art combinations, against the same claims and rely on the same evidence, including identical expert declarations.¹

III. STATEMENT OF REASONS FOR RELIEF REQUESTED

A. Legal Standard

Pursuant to 35 U.S.C. § 315(c), the Board may grant a motion for joining an *inter partes* review petition with another *inter partes* review proceeding. See 35 U.S.C. § 315(c). The Board, in determining whether to exercise its discretion to grant joinder, considers whether the joinder motion: (1) sets forth the reasons why

¹ The only differences between the Petition in this proceeding and in the Mylan IPR relate to the identification of petitioner-specific information.

joinder is appropriate; (2) identifies any new grounds of unpatentability asserted in the petition; (3) explains what impact (if any) joinder would have on the trial schedule for the existing review; and (4) addresses specifically how briefing and discovery may be simplified. *Dell, Inc. v. Network-1 Security Solutions, Inc.*, IPR2013-00385, Paper No. 17 at 4 (PTAB July 29, 2013); *see also Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15, at 4 (PTAB April 24, 2013).

B. Each Factor Weighs in Favor of Granting the Motion for Joinder

The Board “routinely grants motions for joinder where [like here] the party seeking joinder introduces identical arguments and the same grounds raised in the existing proceeding.” *Samsung Elecs. Co., Ltd. v. Raytheon Co.*, IPR2016-00962, Paper No. 12 at 9 (PTAB Aug. 24, 2016) (internal quotations and citations omitted); *see also Sony Mobile Communications v. Ancora Tech.*, IPR2021-00663, Paper 17 at 29-33 (PTAB June 10, 2021) (granting motion for joinder of “copycat” petition, that challenged the same claims of the same patent based on the same grounds of unpatentability and that was supported by essentially the same expert declaration as the first Petition).

1. Joinder with the Mylan IPR is Appropriate

Joinder of Apotex's IPR with the Mylan IPR is appropriate because it will resolve patentability issues between Patent Owner and Petitioners without significant impact on the Mylan IPR.

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