

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CELLTRION, INC.,  
Petitioner,

v.

REGENERON PHARMACEUTICALS, INC.,  
Patent Owner.

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IPR2024-00260  
U.S. Patent No. 11,253,572

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

## I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Petitioner, Celltrion, Inc. (“Celltrion” or “Petitioner”), respectfully requests joinder of the concurrently filed petition for *inter partes* review of U.S. Patent No. 11,253,572 (“the ’572 Patent”) (IPR2024-00260) with *Samsung Bioepis Co., Ltd., v. Regeneron Pharms., Inc.*, IPR2023-00884 (P.T.A.B.), filed April 27, 2023, and instituted on November 17, 2023 (“the Samsung IPR”). (See IPR2023-00884, Paper 13). Celltrion has conferred with Samsung Bioepis (“Samsung”), and Samsung does not oppose this Motion for Joinder.

The instant Petition is substantially the same as the Samsung IPR: it involves the same patent, same claims, same grounds of unpatentability, and the same evidence<sup>1</sup> (including the same prior art combinations) as the Samsung IPR. If joined, Celltrion will assume a “silent understudy” role and will not take an active role in the *inter partes* review proceeding unless Samsung ceases to participate in the instituted IPR. Thus, the proposed joinder will neither unduly complicate the

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<sup>1</sup> Celltrion filed a declaration by its expert, Dr. Christine Kay, as part of its petition materials. The conclusions and underlying reasoning of the experts are identical, and therefore present no additional burden on the part of the Patent Owners to address. Dr. Kay will also not have an active role in the IPR unless Samsung ceases to participate.

Samsung IPR nor delay its schedule. As such, the joinder will promote judicial efficiency in determining patentability in the Samsung IPR without prejudice to Patent Owner.

Although Celltrion is not otherwise time barred pursuant to 37 C.F.R. § 42.101(b), this Motion for Joinder, and accompanying Petition, are timely because they are filed less than one month after a decision instituting trial in the Samsung IPR. 37 C.F.R. § 42.122(b) (“no later than one month after the institution date of any inter partes review for which joinder is requested.”). Accordingly, Celltrion respectfully requests that the Board grant this Motion for Joinder.

## **II. STATEMENT OF REASONS FOR RELIEF REQUESTED**

### **A. Legal Standard**

The Leahy-Smith America Invents Act (AIA) permits joinder of *inter partes* review (IPR) proceedings. Joinder is governed by 35 U.S.C. § 315(c), which states:

(c) JOINDER. – If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

The AIA’s legislative history makes clear that joinder is to be liberally granted. 157 Cong. Rec. S1376 (daily ed. Mar. 8, 2011) (statement of Sen. Kyl). As joinder should be liberally granted, the factors *General Plastic Indus. Co. Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Pap. 19 at 16 (Sept. 6, 2017) favor institution, as Celltrion has not previously filed a petition challenging the same claims of the ’572 patent.<sup>2</sup>

A motion for joinder should “(1) set forth the reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified.” *Dell Inc. v. Network-1 Sec. Solutions, Inc.*, IPR2013-00385, Paper 17 (PTAB July 29, 2013); *Hyundai Motor Co. v. Am. Vehicular Scis. LLC*, IPR2014-01543, Paper 11, at 3 (Oct. 24, 2014); *Macronix Int’l Co. v. Spansion*,

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<sup>2</sup> The other factors are either also positive or neutral. For example, Factor 6, which is the “finite resources of the Board,” favors institution as Celltrion is advancing the same challenges, arguments, and evidence relied upon in the Samsung IPR. For the same reason, Regeneron’s Preliminary Response was not used as a roadmap for this Petition. And as discussed in the Motion, joinder would have no impact on the trial schedule for the Samsung IPR.

IPR2014-00898, Paper 15, at 4 (Aug. 13, 2014) (quoting *Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15, at 4 (April 24, 2013)).

**B. Celltrion’s Motion for Joinder is Timely**

A motion for joinder is timely if the moving party files within one month of institution of the inter partes review for which joinder is requested. 37

C.F.R. 42.122(b). Because Celltrion files this motion within one month after a decision on the institution of the Samsung IPR, this motion is timely.

**C. Joinder is appropriate**

Joinder is appropriate because Celltrion’s Petition does not raise any new grounds of unpatentability and does “not present issues that might complicate or delay” the Samsung IPR. *See Enzymotec Ltd. v. Neptune Techs & Bioresources, Inc.*, IPR2014-00556, Paper 19 (PTAB July 9, 2014). Celltrion’s Petition is substantially identical to the petition in the Samsung IPR, challenging the same claims of the ’572 Patent on the same grounds and relying on the same testimony from an expert declarant. Thus, the only difference between Celltrion’s Petition and the petition filed in the Samsung IPR are the sections on Real Party-In-Interest, Related Matters, and Counsel, which have been appropriately updated.

Joinder would, therefore, have little, if any, impact on the Samsung IPR, the schedule would not be affected, no additional briefing or discovery would be

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