

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ALLERGAN, INC.,

Plaintiff,

v.

**TEVA PHARMACEUTICALS USA, INC., et
al.,**

Defendants.

Civil Action No. 2:15-cv-1455 WCB LEAD

FILED UNDER SEAL

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION TO JOIN THE TRIBE
AS A PARTY PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 25(c) AND
RESPONSE TO COURT'S OCTOBER 6, 2017 ORDER (DKT. 503)**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	2
III. ARGUMENT.....	5
A. The Tribe Is the Owner of the Patents-in-Suit.....	5
B. It Is Proper to Join the Tribe as a Plaintiff Under Fed. R. Civ. P. 25(c)	6
C. The Transaction Between Allergan and The Tribe Was Not a Sham	9
1. The Transfer of the Patents-in-Suit Provides Significant and Much-Needed Benefit to the Tribe	9
2. The Assignment Was Supported by Good and Valuable Consideration	11
3. There Is No Support for Defendants’ Assertion that the Transaction Between Allergan and the Tribe Was a Sham	13
a. The Tribe’s Assertion of Sovereign Immunity in the PTAB Does Not Make This a Sham Transaction.....	13
b. Tribal Lending Cases Are Inapplicable and Do Not Establish that the Transaction Was a Sham	16
c. The Assignment Is Not a Collusive Assignment Under 28 U.S.C. § 1359.....	18
IV. CONCLUSION.....	20

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>AI23 Sys., Inc. v. Hydro-Quebec</i> , 626 F.3d 1213 (Fed. Cir. 2010).....	5, 6
<i>Affinion Loyalty Grp., Inc. v. Maritz, Inc.</i> , 2006 WL 1431065 (D. Del. May 22, 2006).....	7
<i>Airlines Reporting Co. v. S and N Travel</i> , 58 F.3d 857 (2d Cir. 1995).....	19
<i>Amoco Rocmount Co. v. Anschutz Corp.</i> , 7 F.3d 909 (10th Cir. 1993)	19
<i>Attorneys Tr. v. Videotape Computer Prods., Inc.</i> , 93 F.3d 593 (9th Cir. 1996)	20
<i>Bank of Bermuda, Ltd. v. Rosenbloom</i> , 76 Civ. 1830 (GLG), 1976 U.S. Dist. LEXIS 11648 (S.D.N.Y. Dec. 28, 1976).....	12
<i>Betar v. De Havilland Aircraft of Canada, Ltd.</i> , 603 F.2d 30 (7th Cir. 1979)	19
<i>United States ex rel. Cain v. Salish Kootenai Coll., Inc.</i> , 862 F.3d 939 (9th Cir. 2017)	17
<i>El Paso Healthcare Sys. v. Molina Healthcare of New Mexico, Inc.</i> , 683 F. Supp. 2d 454 (W.D. Tex. 2010).....	13
<i>Finn v. Great Plains Lending, LLC</i> , 689 F. App'x 608 (10th Cir. 2017)	17
<i>Gen. Battery Corp. v. Globe-Union, Inc.</i> , 100 F.R.D. 258 (D. Del. 1982)	7, 8, 9
<i>Hyatt Chalet Motels, Inc. v. Salem Bldg. & Constr. Trades Council</i> , 298 F. Supp. 699 (D. Or. 1968)	8
<i>Inline Connection Corp. v. Verizon Internet Servs., Inc.</i> , 2016 WL 5532598 (D. Del. Sept. 28, 2016).....	7
<i>Intellectual Prop. Dev., Inc. v. TCI Cablevision of Cal., Inc.</i> , 248 F.3d 1333 (Fed. Cir. 2001).....	6
<i>Keller v. Bass Pro Shops, Inc.</i> , 15 F.3d 122 (8th Cir. 1994)	12-13

TABLE OF AUTHORITIES (cont'd)

	<u>Page(s)</u>
<i>Kinley Corp. v. Ancira</i> , 859 F. Supp. 652 (W.D.N.Y. 1994).....	11
<i>Kramer v. Caribbean Mills, Inc.</i> , 394 U.S. 823 (1969).....	19
<i>Luxliner P.L. Exp., Co. v. RDI/Luxliner, Inc.</i> , 13 F.3d 69 (3d Cir. 1993).....	7, 8
<i>Mars, Inc. v. JCM Am. Corp.</i> , 2007 WL 776786 (D.N.J. Mar. 9, 2007).....	8
<i>Maysonet-Robles v. Cabrero</i> , 323 F.3d 43 (1st Cir. 2003).....	15
<i>McSparran v. Weist</i> , 402 F.2d 867 (3d Cir. 1968).....	19-20
<i>Memorylink Corp. v. Motorola Sols., Inc., Motorola Mobility, Inc.</i> , 773 F.3d 1266 (Fed. Cir. 2014).....	12
<i>Michigan v. Bay Mills Indian Community</i> 134 S. Ct. 202 (2014).....	10, 18
<i>Mitutoyo Corp. v. Central Purchasing, LLC</i> , 499 F.3d 1284 (Fed. Cir. 2007).....	9
<i>Oil States Energy Servs. LLC v. Greene’s Energy Grp., LLC</i> , 639 F. App’x 639 (Fed. Cir. 2016), cert. granted, 198 L. Ed. 2d 677 (U.S. Jun. 12, 2017).....	14
<i>People ex rel. Owen v. Miami Nation Enterprises</i> , 2 Cal. 5th 222, 236 (2016).....	17, 18
<i>Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. De C.V.</i> , 247 F.Supp.3d 76 (D.D.C. 2017).....	7
<i>Pharmachemie B.V. v. Pharmacia S.p.A.</i> , 934 F. Supp. 484 (D. Mass. 1996).....	15
<i>Prima Tek II, L.L.C. v. A–Roo Co.</i> , 222 F.3d 1372 (Fed. Cir. 2000).....	5
<i>Roth v. Isomed, Inc.</i> , 746 F. Supp. 316 (S.D.N.Y. 1990).....	11-12

TABLE OF AUTHORITIES (cont'd)

	<u>Page(s)</u>
<i>Secured Worldwide LLC v. Kinney</i> , No. 15 CIV. 1761 (CM), 2015 WL 1514738 (S.D.N.Y. Apr. 1, 2015).....	12
<i>Toste Farm Corp. v. Hadbury, Inc.</i> , 70 F.3d 640 (1st Cir. 1995).....	19
<i>United States v. Tucker</i> , 2017 WL 2470836 (S.D.N.Y. June 6, 2017)	16, 17
<i>W.L. Gore & Assocs., Inc. v. C.R. Bard, Inc.</i> , 198 F. Supp. 3d 366 (D. Del. 2016).....	13
<i>Yokeno v. Mafnas</i> , 973 F.2d 803 (9th Cir. 1992)	19
Statutes	
28 U.S.C. § 1359.....	18, 19, 20
Other Authorities	
Federal Rule of Civil Procedure 25(c).....	<i>passim</i>
Moore’s Federal Practice (Matthew Bender 3d ed. 1997) (2007)	8, 9

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.