

U.S. Patent No. 7,326,708
IPR Nos. 2020-01045, 2020-01060, 2020-01072
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TEVA PHARMACEUTICALS USA, INC. and
WATSON LABORATORIES, INC.,
Petitioner,
v.
MERCK SHARP & DOHME CORP.,
Patent Owner.

Inter Partes Review No.: IPR2020-01045

DR. REDDY'S LABORATORIES, INC., and
DR. REDDY'S LABORATORIES, LTD.
Petitioner,
v.
MERCK SHARP & DOHME CORP.,
Patent Owner.

Inter Partes Review No.: IPR2020-01060

SUN PHARMACEUTICAL INDUSTRIES LTD.,
Petitioner,
v.
MERCK SHARP & DOHME CORP.,
Patent Owner.

Inter Partes Review No.: IPR2020-01072

U.S. Patent No. 7,326,708 to Cypes et al.

**PETITIONERS' JOINT REPLY IN SUPPORT OF MOTIONS FOR
JOINDER UNDER 37 C.F.R. §§ 42.22 AND 42.122(b)**

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Cases

Amneal Pharma. LLC v. Almirall, LLC,
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ZTE Corp. v. Adaptix, Inc.,
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Patent Owner’s opposition to the motions for joinder filed by Teva (IPR2020-01045), DRL (IPR2020-01060), and Sun (IPR2020-01072) (collectively “Joinder Petitioners”) fails to undermine the legitimate bases for joinder set forth in Joinder Petitioners’ respective motions. Patent Owner has manufactured disputes where none exist in an attempt to derail joinder and the schedule in the underlying proceeding. For the reasons set forth in the joinder motions and below, Joinder Petitioners’ Motions for Joinder should be granted.

I. Joinder Petitioners Are True Me-Too Petitioners

Merck asserts that Joinder Petitioners have not agreed to a “true understudy role” (Paper 9 at 1¹), but the record shows otherwise. Joinder Petitioners rely on the same prior art and arguments as Mylan, submitted substantially identical petitions and identical expert testimony, and agreed to raise no new arguments. Joinder Petitioners have agreed that Mylan will serve as lead counsel, submit substantive briefs, provide the expert testimony, take and defend any depositions, and argue at hearings. Joinder Petitioners are classic “me-too” petitioners, having agreed to conditions consistent with the grant of joinder. Br. 7–8; Ex. 2029, 1–2; Ex. 2038, 1.

Merck incorrectly argues that there are joinder conditions to which Joinder Petitioners did not agree. Paper 9 at 12–13. Correspondence already of record

¹ For convenience, all references are to the joinder briefs and exhibits filed in IPR2020-01045 (“Teva IPR”). All emphasis is supplied unless otherwise noted.

shows that Joinder Petitioners explicitly agreed to Merck’s conditions:

Condition	Joinder Petitioners’ Position
Mylan subject to word count limits for a single party when filing papers on behalf of itself and Joinder Petitioners.	“Mylan will be Lead Petitioner [and] file all substantive written submissions <i>Joinder petitioners will not file additional pages to Mylan’s papers.</i> ” Ex. 2029, 1.
Joinder Petitioners will obtain prior Board authorization to file any paper or to take any action on its own in the Mylan IPR.	Joinder Petitioners reserve the right to address party-specific issues, but “ <i>will seek Board authorization to file any such paper or to take any action on its own.</i> ” <i>Id.</i> , 2.
Joinder Petitioners will not serve discovery requests in connection with the Mylan IPR.	“ <i>Joinder petitioners . . . will not serve discovery requests in the Mylan IPR.</i> ” <i>Id.</i> , 1.
Joinder Petitioners’ counsel will not participate in a speaking role in Board teleconferences or oral argument before the Board in the Mylan IPR.	“ <i>Mylan will</i> be Lead Petitioner, file all substantive written submissions, [and] <i>conduct all argument at hearings</i> ” <i>Id.</i> , 1.

Joinder Petitioners also agreed to rely on Mylan’s expert, Dr. Chorghade, and to “withdraw their respective opening expert declarations once Dr. Chorghade

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