

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**COALITION FOR AFFORDABLE DRUGS VII LLC**  
Petitioner

v.

**POZEN INC.**  
Patent Owner

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Case No. IPR2015-01344  
Patent No. 8,858,996

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**PATENT OWNER'S MOTION TO EXPUNGE CONFIDENTIAL  
INFORMATION FROM THE RECORD**

*37 C.F.R. § 42.56*

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

Pursuant to 37 C.F.R. § 42.56 and the Board's Decision Denying Institution of *Inter Partes* Review (Paper No. 22), Horizon Pharmaceuticals, Inc. and Pozen Inc. (hereinafter, "Patent Owner") respectfully submit this motion to expunge certain confidential documents from the record.

**I. THE BOARD AUTHORIZED PATENT OWNER'S MOTION TO EXPUNGE**

On September 18, 2015, Patent Owner filed its confidential Preliminary Response (Paper No. 14), a redacted version of its Preliminary Response (Paper No. 13), and supporting exhibits, including confidential Exhibit 2012. Patent Owner also filed a motion to seal both the confidential Preliminary Response and Exhibit 2012. (Paper No. 16.)

On December 17, 2015, the Board entered its Decision Denying Institution of *Inter Partes* Review ("the Decision"). In the Decision, the Board declined to rule on Patent Owner's motion to seal, but authorized Patent Owner to file a motion to expunge any confidential material within thirty days of the Decision or within thirty days of a decision on rehearing, if a rehearing is requested. (Paper No. 22 at 28-29.)

Patent Owner's motion to expunge its confidential material from the public record is being filed within the time authorized by the Board. Counsel for Patent

Owner has conferred with counsel for Petitioner, and counsel for Petitioner does not object to this motion.

**II. PATENT OWNER'S CONFIDENTIAL DOCUMENTS SHOULD BE EXPUNGED FROM THE RECORD**

Petitioner moves to expunge the confidential, unredacted version of its Preliminary Response and Exhibit 2012 from the public record.

Exhibit 2012 is a confidential communication from the FDA to Patent Owner regarding the development of Patent Owner's proprietary Vimovo® product. This document has not been published or otherwise made public. Additionally, Patent Owner has undertaken efforts to maintain the confidentiality of this document in related district court proceedings. Exhibit 2012 has been produced in co-pending patent infringement litigation in the United States District Court for the District of New Jersey<sup>1</sup> directed to, inter alia, related U.S. Patent No.

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<sup>1</sup> *Horizon Pharma, Inc. and Pozen Inc. v. Dr. Reddy's Laboratories, Inc. & Dr. Reddy's Laboratories, Ltd.*, 3:11-cv-02317-MLC-DEA (D.N.J.); *Horizon Pharma, Inc. and Pozen Inc. v. Dr. Reddy's Laboratories, Inc. & Dr. Reddy's Laboratories, Ltd.*, 3:13-cv-00091-MLC-DEA (D.N.J.); *Horizon Pharma, Inc. and Pozen Inc. v. Lupin Ltd. & Lupin Pharmaceuticals, Inc.*, 3:11-cv-04275-MLC-DEA (D.N.J);

6,926,907 under the parties' agreed upon protective order, and designated confidential in those cases.

Section 42.56 states that “[a]fter denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.” 37 C.F.R. § 42.56. The Rules of Practice for Trials Before the Patent Trial and Appeal Board (“Rules of Practice”) state:

Confidential information that is subject to a protective order ordinarily will become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. Section 42.56 allows a party to file a motion to expunge from the record confidential information prior to the information becoming public.

77 Fed. Reg. 48,612, 48,623 (Aug. 14, 2012).

While the Rules of Practice state that “there is an expectation that information be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review . . . ” (77 Fed. Reg. 48,612, 48,623 (Aug. 14, 2012)), this is not an issue here. In the instant Decision,

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*Horizon Pharma, Inc. and Pozen Inc. v. Mylan Pharmaceuticals, Inc.*, 3:13-cv-04022 (D.N.J.); and *Horizon Pharma, Inc., AstraZeneca AB, AstraZeneca LP and Pozen Inc. v. Actavis Labs., FL, et. al.*, 3:13-cv-03038-MLC-DEA (D.N.J.).

the Board stated that it did not rely on Patent Owner's confidential material in reaching its decision not to institute the *inter partes* review. (Paper No. 22 at 26.)

Neither Exhibit 2012 nor the unredacted Preliminary Response is necessary to understand the Board's resolution of this proceeding and should be expunged to protect the confidential information of Patent Owner. Further, the non-confidential version of the Preliminary Response, which redacts the brief discussion of Exhibit 2012, is already on file as Paper No. 13 and should remain so.

### **III. CONCLUSION**

For the reasons stated above, Patent Owner respectfully requests that the Board expunge the un-redacted Preliminary Response (Paper No. 14) and Exhibit 2012 from the record in this *inter partes* review. The redacted version of the Preliminary Response, Paper No. 13, should remain publicly available.

Date: December 28, 2015

Respectfully submitted,

/s/ *Ricardo Rodriguez*

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Ricardo Rodriguez  
Reg. No. 40,789  
Counsel for Patent Owner

**CERTIFICATION OF SERVICE**

I, Ricardo Rodriguez, hereby certify that on this 28<sup>th</sup> day of December 2015, the foregoing Patent Owner's Motion to Expunge was served electronically via email on the following:

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Date: December 28, 2015

BY: */s/ Ricardo Rodriguez*

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