

Adam LaRock

From: MHouston@foley.com
Sent: Tuesday, March 21, 2017 10:38 AM
To: Adam LaRock
Cc: ARG-dymista@foley.com; Michael R. Houston, Ph.D.; Joseph P. Meara; James P. McParland; Dymista 620 IPR
Subject: RE: IPR2017-00807 - Argentum Pharms. LLC v. Cipla Ltd.

Adam,

Following up on our phone call yesterday, I can confirm via this email that Apotex did not fund, suggest, comment on, or even review the draft petition that was filed by my client, Argentum, in IPR2017-00807. Nor has Argentum entered into any agreements with Apotex at this time involving this IPR or the drug at issue, Dymista.

Although not expressly discussed on the call yesterday, we also dispute your characterization of the arguments raised in the petition as having “substantial overlap” with the theories raised by Apotex during trial. For example, the first ground proposed in the petition is based on anticipation by Segal, which to our understanding was not an argument advanced by Apotex at trial. Argentum attended the public portions of the trial and is using the same experts, so that may naturally lead to some similarities in the arguments, but any such similarities in no way stemmed from any direction or control by Apotex. Indeed, the expert engagement agreements provide that the experts won’t use any confidential information from their other engagements, and that any declarations in the IPR are on Argentum’s behalf only.

We presume this will obviate the need for contacting the Board about a possible motion for additional discovery. If not, I would like to know what basis you have for proceeding in view of the above. If there is anything else you would like to discuss, let me know.

Mike

Michael R. Houston

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-----Original Message-----

From: Adam LaRock [mailto:ALAROCK@skgf.com]
Sent: Sunday, March 19, 2017 4:21 PM
To: Houston, Michael R.

Cc: ARG - dymista; Michael R. Houston, Ph.D.; Joseph P. Meara; James P. McParland; Dymista 620 IPR
Subject: RE: IPR2017-00807 - Argentum Pharms. LLC v. Cipla Ltd.

Mike--

Thank you for getting back to us so quickly. From your email below, it doesn't appear that speaking on Monday will obviate the need to contact the Board. But as a courtesy to you, we're happy to speak to you about this issue. Our team is traveling on Monday but we are generally available after 3 PM ET.

As to the first item in your email below, we are slightly confused about exactly what it is you are asking. My email below identified relevant facts for the parties to have a meaningful discussion prior to contacting the Board.

Next, as to your second item, what circumstances in IPR2016-00204 do you view as being fairly similar to the facts here?

Best,

Adam

-----Original Message-----

From: MHouston@foley.com [mailto:MHouston@foley.com]

Sent: Sunday, March 19, 2017 10:49 AM

To: Adam LaRock

Cc: ARG-dymista@foley.com; Michael R. Houston, Ph.D.; Joseph P. Meara; James P. McParland; Dymista 620 IPR

Subject: RE: IPR2017-00807 - Argentum Pharms. LLC v. Cipla Ltd.

Adam,

I think we should at least have a conversation before you contact the Board. I am scheduled to arrive back in the US Monday afternoon, around 2:30 CT and absent some major travel delay (knock on wood) I will be able to talk sometime before COB Monday. The topics that I'd like to discuss, at a minimum, include (1) what evidence you have that Argentum and Apotex are "working together" on this matter besides the circumstantial facts you list in your email below, and (2) how the circumstantial facts you list are different in any significant way from those present in the IPR proceeding against Vimpat (IPR2016-00204) in which Mylan filed a joinder motion under circumstances fairly similar to those here.

Let me know what the latest is you can talk on Monday and a number to reach you, and I'll make every effort to connect with you after I'm on the ground.

Regards,

Mike

-----Original Message-----

From: Adam LaRock [mailto:ALAROCK@skgf.com]

Sent: Friday, March 17, 2017 9:19 AM

To: Houston, Michael R.

Cc: ARG - dymista; Michael R. Houston, Ph.D.; Joseph P. Meara; James P. McParland; Dymista 620 IPR

Subject: RE: IPR2017-00807 - Argentum Pharms. LLC v. Cipla Ltd.

Mike,

As we mentioned, we intended to contact the Board this week.

In the interest of moving forward, however, we will offer you some additional detail. As you're aware, Apotex and Argentum have worked together to resolve Apotex's patent disputes as recently as November of 2016. Given this relationship between Apotex and Argentum, and given: (1) the substantial overlap in theories presented by Apotex at trial over the '620 patent and Argentum's arguments in this IPR; (2) that both parties retained the same experts despite the fact that trial has not concluded in which those experts testified on behalf of Apotex; and (3) Argentum has targeted only those claims asserted against Apotex (and their lineage), and not any claims publicly asserted against other generic pharmaceutical companies, it appears that Apotex and Argentum are working together in this IPR.

Accordingly, Patent Owner seeks additional discovery and production of documents to confirm the scope of the relationship between Apotex and Argentum.

Please let us know by noon on Monday, March 20, if you consent or oppose. If you are available to discuss on Monday, we are also happy to discuss by phone.

Regards,
Adam

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-----Original Message-----

From: MHouston@foley.com [mailto:MHouston@foley.com]
Sent: Thursday, March 16, 2017 4:14 AM
To: Adam LaRock
Cc: ARG-dymista@foley.com; Michael R. Houston, Ph.D.; Joseph P. Meara; James P. McParland; Dymista 620 IPR
Subject: Re: IPR2017-00807 - Argentum Pharms. LLC v. Cipla Ltd.

Adam,

Before taking a position on your request, and before you email the Board, we want to understand just what it is Patent Owner is seeking and why.

I am currently in Japan on business, so it might be a little difficult to have a meet-and-confer call before my return on Monday afternoon, but we can try. Or we can plan to discuss on Monday, late afternoon.

Feel free to exchange emails in the meantime.

Mike

On Mar 16, 2017, at 10:53 AM, Adam LaRock <ALAROCK@skgf.com<mailto:ALAROCK@skgf.com>> wrote:

Counsel:

Patent Owner intends to email the Board tomorrow to seek authorization to file a motion for additional discovery from Petitioner and its identified real parties-in-interest and to compel production of documents from Apotex Inc., Apotex Corp., Dr. Robert Schleimer and Dr. Maureen Donovan for documents and things relating to whether Petitioner has properly identified all real parties-in-interest in IPR2017-00807.

Please let us know by close of business tomorrow if you consent to Patent Owner's request for authorization to file this motion. If you do not consent, please provide your availability next week for a call with the Board. Patent Owner is available next Monday or Wednesday.

Best,

Adam

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Adam LaRock

Associate

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