

From: [Matthew Traupman](#)
To: [Struthers, Abigail](#)
Cc: [Fishman, Deborah](#); [Elliot Choi](#); [OE - Samsung Bioepis](#)
Subject: RE: IPR2023-00566 -- follow-up on M&C re: Samsung's motion for joinder
Date: Friday, March 10, 2023 1:41:54 PM
Attachments: [image001.png](#)

External E-mail

Dear Abby,

We disagree with Regeneron that *Z-Shade Co., Ltd. et al. v. Caravan Canopy Int'l, Inc.*, IPR2021-00449, 2021 WL 1978970 at *3 (P.T.A.B. May 17, 2021), supports its position. In *Z-Shade*, the patent owner did not respond to the motion for joinder and did not otherwise oppose it. In the decision you cite, the PTAB simply quoted from the motion for joinder without any substantive analysis, and there is nothing in *Z-Shade* indicating that the language proposed by Regeneron is required or what it means. As we have explained several times, it is not clear to Samsung what it means for an understudy petitioner to be “bound” by expert testimony. This is particularly concerning for Samsung because we do not believe that even Mylan is “bound” by the testimony of its experts. In contrast, at least one of the cases Samsung cited does involve opposed motions for joinder where the PTAB substantively discussed the requirements for joinder. Notably, none of these cases mandates the language proposed by Regeneron. Your attempt to distinguish these cases is unavailing given Samsung’s express agreement that it will withdraw Dr. Bloom’s declaration upon completion of the depositions of Mylan’s experts in the next few weeks. After mid-March, Samsung will not have any expert declaration or testimony to rely upon other than the declarations and testimony from IPR2022-01226, and the PTAB’s analysis in the cases cited by Samsung are fully applicable to the current situation.

Moreover, once the Bloom declaration is withdrawn, Samsung will be in the exact same procedural posture as Celltrion, which is also seeking to join IPR2022-01226. Yet, Regeneron already has stated that it does not oppose Celltrion’s motion for joinder and Regeneron has not demanded that Celltrion agree to be bound by Mylan’s experts. Thus, Regeneron is attempting to treat two joinder parties differently despite the fact that they will be in the same procedural position upon completion of the depositions of Mylan’s experts. Regeneron’s attempt to premise its demand that Samsung agree to be bound by Mylan’s experts on the existence of the Bloom declaration makes no sense and is not supported by either the case law or Regeneron’s course of conduct in other proceedings involving the same patent.

Samsung does not believe that a contested motion for joinder under these circumstance is a good use of either the Board’s or the parties’ resources; however, Samsung is prepared to raise these points with the Board if Regeneron chooses to oppose its motion for joinder.

Best,
Matt

Matthew Traupman
Partner

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From: Struthers, Abigail <Abigail.Struthers@arnoldporter.com>
Sent: Thursday, March 9, 2023 6:55 PM
To: Matthew Traupman <matthewtraupman@quinnemanuel.com>
Cc: Fishman, Deborah <Deborah.Fishman@arnoldporter.com>; Elliot Choi <elliottchoi@quinnemanuel.com>; QE - Samsung Bioepis <qe-samsungbioepis@quinnemanuel.com>
Subject: RE: IPR2023-00566 -- follow-up on M&C re: Samsung's motion for joinder

[EXTERNAL EMAIL from abigail.struthers@arnoldporter.com]

Dear Matt,

Our request that Samsung agree to be bound by the representations (i.e., the deposition and declaration testimony) of Mylan's experts is taken directly from the case I provided on Friday— *Z-Shade Co., Ltd. et al. v. Caravan Canopy Int'l, Inc.*, IPR2021-00449, 2021 WL 1978970 at *3 (“[Joinder] Petitioner agrees to rely entirely on, and be bound by, the expert declaration(s) and deposition(s) in the Walmart IPR.”) None of the cases you cite in your email is on point, because none of those cases involved a Joinder Petitioner filing a separate declaration from its own expert, as Samsung has done here. While we believe it is clear that the “representations” of Mylan's experts refers to the experts' declaration and deposition testimony, we would consider a minor “clarifying” edit to that effect if you provide it tonight. Otherwise, we will oppose Samsung's motion for joinder.

Best regards,
Abby

Abigail Struthers
Partner | [Bio](#)



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From: Matthew Traupman <matthewtraupman@quinnemanuel.com>
Sent: Thursday, March 9, 2023 5:55 PM
To: Struthers, Abigail <Abigail.Struthers@arnoldporter.com>
Cc: Fishman, Deborah <Deborah.Fishman@arnoldporter.com>; Elliot Choi <elliotchoi@quinnemanuel.com>; QE - Samsung Bioepis <qe-samsungbioepis@quinnemanuel.com>
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Dear Abby,

Our draft language copies essentially verbatim the language used by the Board in several other IPRs in which there was a motion for joinder. *See, e.g. Ecobee Techs. Ulc v. Ecofactor, Inc.*, No. IPR2022-00473, 2023 WL 372383, at *3 (P.T.A.B. Jan. 24, 2023) (“subsequent to joinder, Petitioner is bound by every paper filed by and every representation made by Google in IPR2022-00473, except for papers and representations regarding settlement between Google and Patent Owner.”); *Dell Inc. v. Neodron Ltd.*, No. IPR2020-00731, 2020 WL 4390670, at *3 (P.T.A.B. July 31, 2020) (“subsequent to joinder, Petitioner is bound by every paper filed by and every representation made by Samsung in IPR2020-00515, except for papers and representations regarding settlement between Samsung and Patent Owner.”); *Ericsson Inc. v. Uniloc 2017 LLC*, No. IPR2020-00376, 2020 WL 2613358, at *7 (P.T.A.B. May 22, 2020) (“subsequent to joinder, Ericsson Inc. is bound by every paper filed by and every representation made by Microsoft Corporation in IPR2019-01116, except for papers and representations regarding settlement between Microsoft Corporation and Patent Owner.”). In contrast, your proposed language, which asks Samsung to agree to be “bound” by “representations” made by Mylan’s experts is not found in any case law that Samsung is aware of, including the case law you sent last Friday. Moreover, your proposed language is problematic for several reasons. First, it is not clear to Samsung what portions of an expert’s testimony would or would not be considered a “representation.” Second, it is not clear to Samsung what it means for a party to be “bound” by a “representation” made by an expert. Indeed, Samsung is not aware of any case law that would support a finding that Mylan is “bound” by “representations” made by its own experts, let alone that an understudy petitioner would be bound by such representations. Samsung therefore does not agree to Regeneron’s proposed edits.

Samsung expects that the transcripts of the cross examinations of Drs. Albini and Gerritsen will be filed as exhibits in IPR2022-01226. To the extent that Mylan does or does not make objections to those exhibits, Samsung is agreeing to be bound by Mylan’s filings. Moreover, as we noted in our email correspondence last week, in the event that Samsung becomes the lead petitioner before the transcripts of the cross examinations of Drs. Albini and Gerritsen are filed, Samsung will not object to those exhibits on the basis that they were taken in a different IPR and Regeneron would be free to seek to introduce the cross examinations of Drs. Albini and Gerritsen as if they were taken in IPR2023-00566. This is fully consistent with Samsung’s role as “understudy” petitioner and we do not believe Regeneron’s proposal to impose additional limitations on Samsung as a condition for stipulating to Samsung’s motion for joinder is either necessary or appropriate.

We believe our draft stipulation is appropriate and consistent with the applicable regulations and PTAB case law. Please let us know if Regeneron will agree to it.

Best,
Matt

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From: Struthers, Abigail <Abigail.Struthers@arnoldporter.com>
Sent: Thursday, March 9, 2023 8:57 AM
To: Matthew Traupman <matthewtraupman@quinnemanuel.com>
Cc: Fishman, Deborah <Deborah.Fishman@arnoldporter.com>; Elliot Choi <elliottchoi@quinnemanuel.com>; QE - Samsung Bioepis <qe-samsungbioepis@quinnemanuel.com>
Subject: RE: IPR2023-00566 -- follow-up on M&C re: Samsung's motion for joinder

[EXTERNAL EMAIL from abigail.struthers@arnoldporter.com]

Dear Matt,

You edits removed reference to Mylan's experts. Is Samsung declining to agree to be bound by the representations of Mylan's experts? Assuming that is not the case, I have accepted your edits and reinstated the reference to Mylan's experts in the attached (and fixed a typo in the citation in para. 3). Please confirm that this version is acceptable at your earliest convenience. If the parties are in agreement we would like to get this executed by COB ET today.

Best regards,
Abby

Abigail Struthers
Partner | [Bio](#)



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Sent: Wednesday, March 8, 2023 5:58 PM
To: Struthers, Abigail <Abigail.Struthers@arnoldporter.com>
Cc: Fishman, Deborah <Deborah.Fishman@arnoldporter.com>; Elliot Choi <elliotchoi@quinnemanuel.com>; QE - Samsung Bioepis <qe-samsungbioepis@quinnemanuel.com>
Subject: RE: IPR2023-00566 -- follow-up on M&C re: Samsung's motion for joinder

External E-mail

Dear Abby,

Attached are SB's edits to the draft stipulation.

Best,
Matt

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Sent: Tuesday, March 7, 2023 1:57 PM
To: Matthew Traupman <matthewtraupman@quinnemanuel.com>
Cc: Fishman, Deborah <Deborah.Fishman@arnoldporter.com>; Elliot Choi <elliotchoi@quinnemanuel.com>; QE - Samsung Bioepis <qe-samsungbioepis@quinnemanuel.com>
Subject: RE: IPR2023-00566 -- follow-up on M&C re: Samsung's motion for joinder

[EXTERNAL EMAIL from abigail.struthers@arnoldporter.com]

Dear Matt,

Thank you for your email. I've attached a draft joint stipulation to memorialize the parties' agreements. Please confirm receipt and let us know at your earliest convenience, but no later than COB Eastern tomorrow, whether Samsung will jointly stipulate.

Best regards,
Abby

Abigail Struthers

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From: Matthew Traupman <matthewtraupman@quinnemanuel.com>

Sent: Monday, March 6, 2023 9:09 PM

To: Struthers, Abigail <Abigail.Struthers@arnoldporter.com>

Cc: Fishman, Deborah <Deborah.Fishman@arnoldporter.com>; Elliot Choi <elliotchoi@quinnemanuel.com>; QE - Samsung Bioepis <qe-samsungbioepis@quinnemanuel.com>

Subject: RE: IPR2023-00566 -- follow-up on M&C re: Samsung's motion for joinder

External E-mail

Dear Abby,

We appreciated the opportunity on Friday to discuss SB's motion for joinder and to consider the case law you forwarded. SB confirms that upon completion of the depositions of Drs. Albini and Gerritsen, in IPR2022-01226 (which you indicated are currently scheduled to be completed by March 21, 2023), SB will withdraw Dr. Bloom's declaration in IPR2023-00566. Furthermore, consistent with the case you forwarded, SB confirms that it "will be bound in this proceeding by the papers filed and representations made by Mylan in the Mylan IPR." *Sun Pharms. Indus. Ltd. v. Merck Sharp & Dohme Corp.*, 2020 WL 5221759, at *4 (Patent Tr. & App. Bd. Sept. 1, 2020).

Regards,
Matt

Matthew Traupman
Partner

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From: Struthers, Abigail <Abigail.Struthers@arnoldporter.com>
Sent: Friday, March 3, 2023 3:20 PM
To: Matthew Traupman <matthewtraupman@quinnemanuel.com>
Cc: Fishman, Deborah <Deborah.Fishman@arnoldporter.com>; Elliot Choi <elliotchoi@quinnemanuel.com>
Subject: IPR2023-00566 -- follow-up on M&C re: Samsung's motion for joinder

[EXTERNAL EMAIL from abigail.struthers@arnoldporter.com]

Dear Matt,

Thank you for the call this afternoon. As discussed, please see attached examples of decisions citing joinder parties' agreement to waive/withdraw joinder expert declaration and be bound by testimony and submissions of the main petitioner. We look forward to hearing from you on Monday regarding proposed procedure.

Best regards,
Abby

Abigail Struthers

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