

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORMYCON AG,
Petitioner

v.

REGENERON PHARMACEUTICALS, INC.,
Patent Owner

Case IPR2025-00233
Patent No. 11,084,865

**PETITIONER’S REPLY IN SUPPORT OF THE CONDITIONAL MOTION
FOR JOINDER
UNDER 35 U.S.C. §315(c), 37 C.F.R. §42.22, AND §42.122(b)**

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I. INTRODUCTION

Formycon AG (“Formycon” or “Petitioner”) hereby replies to Patent Owner’s Response (Paper 7, “Response” or “Resp.”) to Petitioner’s Conditional Motion for Joinder (Paper 1, “Motion” or “Mot.”). Formycon’s Conditional Motion requested joinder with IPR2025-00176, if that IPR has been instituted and is still pending when the Board reaches Formycon’s Motion. Mot. 1. This Reply is timely under 37 C.F.R. §42.25(a)(2).

Formycon’s Petition is substantively the same as the petition Samsung Bioepis Co., Ltd. (“Samsung Bioepis”) filed in IPR2025-00176. Mot. 2, 4-5. Formycon’s Petition challenges the same claims, on the same grounds, and relies on the same prior art. *Id.* at 4-5. Formycon stipulated in its Motion that, if joinder is granted, then it will act as an “understudy” and will not assume an active role unless Samsung Bioepis ceases to participate in IPR2025-00176. *Id.* at 1-2. Formycon also agreed to numerous other conditions for the “understudy” role. *Id.* at 8-9 (Formycon’s stipulated conditions (a)-(d)).

In response, Patent Owner (“PO”) argues that that the Board should grant joinder only if numerous “additional conditions” are imposed. Resp. 2-5. None of PO’s additional conditions are necessary, however, because Formycon’s stipulated conditions are consistent with Board practice. Moreover, most of PO’s “additional

conditions” are cumulative of, or even identical to, Formycon’s stipulated conditions.

II. FORMYCON’S PROPOSED CONDITIONS ON EXPERT DEPOSITIONS ARE CONSISTENT WITH BOARD PRACTICE

Formycon explained in its Motion that its “experts submitted substantively identical declarations to Samsung Bioepis’ experts (except for their respective qualifications and experience).” Mot. 8. Formycon further explained that its “experts need not be deposed in the proposed joined proceeding unless Samsung Bioepis is terminated from IPR2025-00176 *prior to any necessary depositions.*” *Id.* (emphasis added).

Notwithstanding this language, PO asserts that Formycon has made an “unacceptable” “reservation of rights” and that Formycon seeks to require PO to engage in “an additional round of multiple expert depositions whenever SB is terminated.” Resp. 2-3. But Formycon’s stipulation is *exactly the same* as that the Board approved in the very cases on which PO relies in its Response: *American Honda Motor Co. v. Neo Wireless, LLC*, IPR2023-00791, Paper 11 at 13 (PTAB Oct. 10, 2023) and *Mercedes-Benz USA, LLC v. Neo Wireless, LLC*, IPR2023-00079, Paper 11 at 11 (PTAB May 5, 2023). *See* Resp. 3.

In both of those cases, the petitioner seeking joinder stated that it would “not rely on expert testimony beyond that submitted by the Volkswagen IPR Petitioner

unless the Volkswagen IPR Petitioner is terminated from the case *prior to any necessary depositions.*” IPR2023-00791, Paper 2 at 8 (emphasis added); IPR2023-00079, Paper 3 at 8; *see also* Resp. 3 (citing *American Honda* and *Mercedes-Benz*).

To the extent any confusion remains, Formycon reiterates that it will not rely on expert testimony in IPR2025-00176 beyond that submitted by Samsung Bioepis unless Samsung Bioepis is terminated from the case prior to any necessary depositions. The Board, however, should reject any attempt by PO to exclude testimony of Formycon’s experts *before* any necessary depositions have occurred. As an example, should Samsung Bioepis be terminated before any necessary depositions of the Reply declarants have occurred, then Formycon would take over responsibility for depositions. *See, e.g.*, IPR2023-00791, Paper 2 at 9 n.2.

III. PO’S OTHER PROPOSED CONDITIONS ARE UNNECESSARY

Next, PO asserts that it will oppose joinder unless the Board imposes 8 other conditions. Resp. 3-6. Because Formycon has already agreed to conditions consistent with Board practice and PO’s additional conditions are unnecessary, the Board should reject PO’s demands.

Demand 1. Formycon has already stated that all filings by it in IPR2025-00176 shall be consolidated with the filings of SB, unless a filing concerns issues solely involving Formycon. Mot. 8. PO’s demand that ***SB*** be limited in word-count limits is unnecessary and counterproductive at this time. First, the Board’s

Rules already have limits on words and/or pages. 37 C.F.R. §42.24. Second, whether good cause exists for the waive those Rules should not be prejudged. *Id.*, §§42.5(b), 42.24(a)(2).

Demands 2-6. PO's demands related to discovery requests, speaking roles, and oral argument (Resp. 4-5) are unnecessary because Formycon's stipulated conditions already limit Formycon's participation in a manner consistent with Board practice by limiting additional discovery, briefing, and arguments. *See* Mot. 7–9. The Board routinely grants motions for joinder where petitioner agrees to participate as Formycon proposes here. *See, e.g., Advanced Micro Devices, Inc. et al. v. Monterey Research, LLC*, IPR2021-00776, Paper 13 at 22 (PTAB Oct. 13, 2021); *Mylan Pharms. Inc. v. Novartis AG*, IPR2015-00268, Paper 17 at 5 (PTAB Apr. 10, 2015). Indeed, Formycon's stipulated conditions (a)-(d) (Mot. 8-9) are substantially identical to those the petitioner proffered, and the Board accepted, in *Advanced Micro Devices*. *See* IPR2021-00776, Paper 3 at 9-10 (stipulated conditions (a)-(d)).

PO's demand that Formycon obtain prior Board authorization to file any paper or take any action (Resp. 4) is also unnecessary. Patent Owner cites to *Ericsson Inc., v. Uniloc 2017 LLC*, IPR2020-00376, Paper 16 at 10 (PTAB May 22, 2020), as authority for its demand, but neglects to mention that ***petitioner*** stipulated to that condition in its motion without the Board's requirement. *See*

Paper 16 at 9-10 (listing petitioner's stipulated conditions). In other cases, the Board has declined to require this condition. For example, the panels in *American Honda* and *Mercedes-Benz*, cited in PO's opposition, determined that prior authorization was "not necessary" based on each petitioner's stipulation that it would act as an understudy. *See* IPR2023-00791, Paper 11 at 16 (declining to impose patent owner's condition as unnecessary); IPR2023-00079, Paper 11 at 13 (same).

Demands 7 and 8. Formycon already agreed to conditions stated in its Motion. Mot. 8.

IV. CONCLUSION

Formycon respectfully requests that its Petition for *inter partes* review be instituted and that Formycon be joined to IPR2025-00176.

Respectfully submitted,

Dated: January 30, 2024

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on January 30, 2024, a complete and entire copy of this Petitioner's Reply in Support of Conditional Motion for Joinder was provided via email to the Patent Owner by serving the correspondence email addresses of record as follows:

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