

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BEIGENE USA, INC. and BEIGENE, LTD.,
Petitioner,

v.

PHARMACYCLICS LLC,
Patent Owner.

PGR2024-00009
Patent 11,672,803 B2

Before SHERIDAN K. SNEDDEN, SUSAN L. C. MITCHELL, and
TINA E. HULSE, *Administrative Patent Judges*.

HULSE, *Administrative Patent Judge*.

ORDER
Granting Petitioner's Unopposed Motion to
Submit Supplemental Information
37 C.F.R. § 42.223(a)

I. INTRODUCTION

BeiGene USA, Inc. and BeiGene, LTD. (collectively, “Petitioner”) filed a Petition requesting a post-grant review of claims 1–8, 12, and 20 of U.S. Patent No. 11,672,803 B2 (“the ’803 Patent”). Paper 2 (“Pet.”). We instituted trial on May 1, 2024. Paper 9. On May 29, 2024, the Board received an e-mail from Petitioner requesting authorization to file an unopposed motion to submit supplemental information under 37 C.F.R. § 223(a). We granted Petitioner’s request that same day. Ex. 3001.

On June 5, 2024, Petitioner filed an unopposed Motion to Submit Supplemental Information. Paper 17 (“Mot.”). Specifically, Petitioner seeks to file Exhibits 1102–1104, which are affidavits of Nathaniel E Frank-White, a Records Request Processor at the Internet Archive, which operates the Wayback Machine. Petitioner asserts that Mr. Frank-White will explain the Internet Archive’s web archives and authenticate Exhibits 1009–1011 and 1058. *Id.* at 2–3. Petitioner indicates that Pharmacyclics LLC (“Patent Owner”) does not oppose Petitioner’s Motion. *Id.* at 2.

For the reasons set forth below, we grant Petitioner’s Motion.

II. ANALYSIS

After trial has been instituted, a party may file a motion to submit supplemental information under 37 C.F.R. § 42.223(a) if: (1) the request for authorization to file the motion is made within one month of the date the trial is instituted; and (2) the supplemental information is relevant to a claim for which trial has been instituted. Satisfying the two elements of Rule 223(a), however, does not guarantee the granting of the motion. Rather, the Federal Circuit has instructed us that the “guiding principle” in making any determination, including whether to grant a motion to submit

supplemental information, is to “ensure efficient administration of the Office and the ability of the Office to complete [the proceeding] in a timely manner.” *Redline Detection LLC v. Star Envirotech, Inc.*, 811 F.3d 434, 445 (Fed. Cir. 2015).

Petitioner asserts that its motion satisfies the timeliness requirement of Rule 223(a)(1) because it requested authorization to file its motion within one month of institution. Mot. 4 (noting the Board instituted trial on May 1 and Petitioner made its request on May 29). Petitioner further asserts that its motion satisfies Rule 223(a)(2) because the proposed supplemental information is relevant to the claims for which trial has been instituted. According to Petitioner, Exhibits 1102–1104 provide further evidence that support the public availability of Byrd¹ (Exs. 1009–1011) and the 2016 IMBRUVICA Label (Ex. 1058), which Petitioner relies on to challenge the ’803 Patent claims in Grounds 3 and 4 of the Petition (Pet. 56). Mot. 4–5.

Petitioner also contends that its motion is consistent with the efficient administration of the proceeding and the ability of the Board to complete the proceeding in a timely manner, as required by *Redline*. Mot. 5. Petitioner asserts that the supplemental information does not change the grounds or evidence of unpatentability in this proceeding. *Id.* at 5. And Petitioner notes that Patent Owner does not oppose the Motion and will have sufficient time to address the supplemental information before filing its Patent Owner Response. *Id.*

Having considered Petitioner’s arguments and the proposed supplemental information in Exhibits 1102–1104, we find Petitioner’s

¹ Byrd et al., *Targeting BTK with ibrutinib in relapsed chronic lymphocytic leukemia*, 369 N. ENGL.J. MED. 32–42 (2013) (Ex. 1009, “Byrd”).

Motion is timely and that the supplemental information is relevant to Grounds 3 and 4 on which trial has been instituted, thereby satisfying the requirements of Rule 223(a)(1) and (2). Moreover, we find that granting the Motion comports with our guiding principles of efficiency for the reasons stated by Petitioner. *See* Mot. 5.

ORDER

Accordingly, it is hereby:

ORDERED that Petitioner's Motion to Submit Supplemental Information is *granted*.

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Patent 11,672,803 B2

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