

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**MYLAN PHARMACEUTICALS INC.,
BRECKENRIDGE PHARMACEUTICAL, INC.,
ALEMBIC PHARMACEUTICALS LTD.,**
Appellants

v.

**RESEARCH CORPORATION TECHNOLOGIES,
INC.,**
Appellee

2017-2088, -2089, -2091

Appeals from the United States Patent and Trade-
mark Office, Patent Trial and Appeal Board in Nos.
IPR2016-00204, IPR2016-01101, IPR2016-01242, and
IPR2016-01245.

ON MOTION

Before PROST, *Chief Judge*.

ORDER

Research Corporation Technologies, Inc. moves to
dismiss these appeals. Mylan Pharmaceuticals Inc.,

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Breckenridge Pharmaceutical, Inc., and Alembic Pharmaceuticals Ltd. (collectively, “the defendants”) oppose.

Research Corporation sued the defendants in federal district court, accusing them of infringing United States Reissued Patent No. RE38,551. Breckenridge alone petitioned the United States Patent and Trademark Office to institute *inter partes* review of the ’551 patent within a year of service of Research Corporation’s complaint, but the Director declined to institute such review.

Argentum Pharmaceuticals LLC, which has never been accused of infringing the patent, subsequently petitioned for *inter partes* review of the patent, which the Director granted. The defendants then moved the Director to join them in Argentum’s proceeding. The request was granted, but the Patent Trial and Appeal Board limited the defendants’ participation “subject to Argentum’s acquiescence” and ordered that they “shall not file papers or exhibits apart from Argentum.” The Board ultimately issued a final written decision that rejected the challenges to the validity of the instituted claims. The defendants—but not Argentum—appealed to this court.

Section 319 of title 35 of the United States Code provides that “[a] party dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 318(a) may appeal the decision pursuant to sections 141 through 144. Any party to the *inter partes* review shall have the right to be a party to the appeal.” Section 141(c) likewise provides that “[a] party to an *inter partes* review or a post-grant review who is dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 318(a) or 328(a) (as the case may be) may appeal the Board’s decision only to the . . . Federal Circuit.”

Research Corporation argues that none of the defendants here can be considered “a party” within the meaning of sections 319 and 141 because they are “entities that are

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not within the zone of interests to seek judicial review of the agency action in the circumstances of this matter.” In support of this argument, Research Corporation notes that the defendants were themselves barred from filing a petition for review under 35 U.S.C. § 315(b) because they had been served more than a year earlier with a complaint alleging infringement of the patent. Research Corporation further points out that these entities were restricted in the agency proceeding to only a subordinate, non-independent joinder role and that the original petitioner, Argentum, would not have standing to appeal to this court.

The defendants contend that under the plain meaning of the statutory provisions each defendant is a “party” under sections 319 and 141 because they were each joined as a “party” to the proceeding below by the Director under 35 U.S.C. § 315(c) (providing that “[i]f the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition . . . that the Director . . . determines warrants the institution of an inter partes review”). The defendants also point out that section 315(b) expressly provides that the one-year time limitation noted by Research Corporation does “not apply to a request for joinder under subsection (c).” Accordingly, the defendants argue that the motion to dismiss is without merit and should be denied.

Having considered the parties’ arguments on this issue, the court deems it the proper course here to deny the motion without prejudice to Research Corporation raising its arguments in its response brief.

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

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FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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