

NOTE: This order is nonprecedential.

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

ABBVIE BIOTECHNOLOGY, LTD.,
Appellant

v.

COHERUS BIOSCIENCES INC.,
Appellee

2017-2304, -2305, -2306

Appeals from the United States Patent and Trade-
mark Office, Patent Trial and Appeal Board in Nos.
IPR2016-00172, IPR2016-00188, and IPR2016-00189.

ABBVIE BIOTECHNOLOGY, LTD.,
Appellant

v.

**BOEHRINGER INGELHEIM INTERNATIONAL
GMBH, BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.,**
Appellees

2017-2362, -2363

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2016-00408 and IPR2016-00409.

Before TARANTO, *Circuit Judge*.

O R D E R

In these fully-briefed consolidated appeals, AbbVie Biotechnology, Ltd. notifies the court that it challenges the constitutionality of the application of the America Invents Act in these cases.

Upon notice of the fact that “a party questions the constitutionality of an Act of Congress in a proceeding in which the United States . . . is not a party,” the clerk of this court must “certify that fact to the Attorney General.” Fed. R. App. P. 44(a); *see also* 28 U.S.C. § 2403(a) (“In any action . . . in a court of the United States to which the United States . . . is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn into question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene . . . for argument on the question of constitutionality.”).

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The proceedings in the above-captioned appeals are stayed.
- (2) Notice of AbbVie’s constitutional challenge is hereby certified to the Attorney General.
- (3) No later than 30 days from the date of filing of this order, the Attorney General is directed to inform this court whether the United States intends to intervene in these appeals.

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(4) If the United States elects to intervene in these appeals, the stay will be lifted, AbbVie's reply brief will be stucken, the United States's response brief will be due no later than 40 days from the date of filing of the United States's election to intervene, and AbbVie's replacement reply brief will be due no later than 14 days after service of the United States's response brief.

(5) If the United States elects not to intervene, the stay will be lifted and these appeals will proceed in the regular course.

FOR THE COURT

Oct. 31, 2018
Date

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

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cc: United States Attorney General

Nos. 2017-2304, -2305, -2306, -2362, -2363

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ABBVIE BIOTECHNOLOGY, LTD.,

Appellant,

v.

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BOEHRINGER INGELHEIM INTERNATIONAL GMBH, BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.,

Appellees.

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IPR2016-00408, and IPR2016-00409

**APPELLANT ABBVIE BIOTECHNOLOGY, LTD.’S
NOTICE OF CONSTITUTIONAL CHALLENGE**

Pursuant to Federal Rule of Appellate Procedure 44(a), Appellant AbbVie Biotechnology, Ltd (“AbbVie”) hereby gives notice to the Clerk of the U.S. Court of Appeals for the Federal Circuit that AbbVie has raised a constitutional challenge to the application of the Leahy-Smith America Invents Act (“AIA”) in these consolidated cases.

AbbVie raised its constitutional challenge in its notice of appeal, docketing statement, opening brief, and reply brief. On September 26, 2018, however, this

Court issued a Notice of Proposed Amendments to the Federal Circuit Rules of Practice. One of the proposed new practice notes states:

Inclusion of a constitutional challenge in a brief or motion is insufficient to satisfy the written notice requirements of Federal Rule of Appellate Procedure 44. Parties must file a separate notice before the clerk of court will certify a matter to the Attorney General of the United States or the attorney general of a State.

The comment period on the proposed changes remains open, and if adopted, the amendments would not take effect until December 1, 2018. However, in light of the additional guidance provided by Notice and in anticipation of the new practice note taking effect, AbbVie hereby provides a separate notice under Rule 44(a).

Dated: October 17, 2018

Respectfully submitted,

/s/ Thomas G. Saunders

THOMAS G. SAUNDERS

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*Counsel for Appellant AbbVie
Biotechnology, Ltd*

CERTIFICATE OF INTEREST

Counsel for Appellant AbbVie Biotechnology, Ltd. certifies the following:

1. The full name of every party or *amicus* represented by us is:

AbbVie Biotechnology, Ltd

2. The names of the real party in interest represented by us is:

Not applicable.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or *amicus curiae* represented by me are:

AbbVie Bahamas Ltd.; AbbVie Limited; Pharmacyclics Switzerland GmbH; AbbVie Overseas S.à r.l.; AbbVie International S.à r.l.; AbbVie (Gibraltar) Holdings Limited Luxembourg S.C.S.; Pharmacyclics LLC; AbbVie (Gibraltar) Holdings Limited; AbbVie (Gibraltar) Limited; AbbVie Inc.

4. The names of all law firms and the partners or associates that appeared for the party or *amicus* now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP: John Williamson

FOLEY HOAG LLP: Scott E. Kamholz

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal:

None

Dated: October 17, 2018

/s/ Thomas G. Saunders

THOMAS G. SAUNDERS

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of October, 2018, I filed the foregoing with the Clerk of the United States Court of Appeals for the Federal Circuit via the CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

/s/ Thomas G. Saunders
THOMAS G. SAUNDERS

October 17, 2018