

No. 18A892

IN THE
Supreme Court of the United States

SENJU PHARMACEUTICAL CO., LTD. AND MITSUBISHI CHEMICAL CORPORATION,

Petitioners,

v.

AKORN, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**APPLICATION FOR FURTHER EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

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**APPLICATION FOR FURTHER EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

To: Chief Justice John G. Roberts Jr., Circuit Justice for the United States
Court of Appeals for the Federal Circuit:

1. Pursuant to this Court's Rules 13.5 and 22, Applicants Senju Pharmaceutical Co., Ltd. and Mitsubishi Chemical Corporation ("Applicants") respectfully request a further extension of thirty (30) days, to and including May 10, 2019, to file a petition for a writ of certiorari in this case. Applicants' petition will challenge the decision of the Federal Circuit in *Senju Pharmaceutical Co. v. Akorn, Inc.*, 733 F. App'x 1024 (Fed. Cir. 2018), a copy of which is attached to Applicants' initial application for an extension of time, filed on February 28, 2019.

2. The Federal Circuit issued its decision affirming under Federal Circuit Rule 36 on August 8, 2018, and it denied Applicants' timely petition for rehearing en banc on December 11, 2018.

3. Applicants' petition for a writ of certiorari in this case was initially due on March 11, 2019. On March 4, 2019, the Court granted Applicants' application to extend the time in which to file a petition for a writ of certiorari by 30 days, to and including April 10, 2019. Consequently, without the requested extension, Applicants' petition for a writ of certiorari would be due on April 10, 2019. With the requested extension, the petition would be due on May 10, 2019. This Court's jurisdiction will be based on 28 U.S.C. § 1254(1). In accordance with Sup. Ct. R.

13.5, Applicants are filing this application at least ten days before the current due date.

4. As explained in Applicants' initial Application, this case is a serious candidate for review. It presents two important questions of appellate procedure and patent law. The first is whether the Federal Circuit's continued practice of affirming orders of the Patent Trial and Appeal Board without opinion under Federal Circuit Rule 36 violates 35 U.S.C. § 144, which requires the Federal Circuit to issue a "mandate *and opinion*" in every appeal from the Patent Office. The second is whether the Board (or any other factfinder) must consider all objective evidence of non-obviousness in determining whether a patent is invalid for obviousness.

5. This application for a 30-day extension is not filed for purposes of delay. The additional time sought is necessary for counsel to adequately prepare Applicants' petition for a writ of certiorari in light of counsel's many other obligations—including a reply brief in support of the petition for certiorari in *Sample v. United States*, No. 18-759 (to be filed the week of March 25); a brief of amicus curiae in support of the petition for certiorari in *SkyWest, Inc. v. Hirst*, No. 18-1097 (due March 25); an appellate brief in *Harwood v. American Airlines, Inc.*, 4th Cir. Nos. 18-2033, 2074 (due April 12); and a motion in opposition to class certification in *Medical Society of the State of New York v. UnitedHealth Group, Inc.*, S.D.N.Y. No. 1:16-cv-05265-JPO (due March 29)—and the complex record involved in this case.

6. For these reasons, Applicants request the entry of an order extending their time to file their petition for a writ of certiorari until and including May 10, 2019.

Respectfully submitted,

By: /s/ Anton Metlitsky

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