

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NOVEN PHARMACEUTICALS, INC.
AND MYLAN PHARMACEUTICALS INC.,
Petitioners

v.

NOVARTIS AG AND LTS LOHMANN THERAPIE-SYSTEME AG,
Patent Owners

Inter Partes Review IPR2014-00549¹

U.S. Patent No. 6,316,023

PETITIONERS' MOTION TO EXCLUDE

¹ Case IPR2015-00265 has been joined with this proceeding.

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Pursuant to 37 C.F.R. §§ 42.61(a), 42.62 and 42.64(c), Petitioners Noven Pharmaceuticals, Inc. (“Noven”) and Mylan Pharmaceuticals Inc. (“Mylan”) move to exclude Exhibits 2015, 2032, 2053, 2059 and 2061 as hearsay under Federal Rule of Evidence (“FRE”) 802, and to further exclude Exhibits 2015, 2032, and 2059 as unauthenticated under FRE 901. Petitioners further move to exclude Exhibit 2059 as a purported summary of test results for which underlying data was not produced by Patent Owners, under F.R.E. 1006 and 37 C.F.R. § 42.65. Petitioners also move to exclude Paragraphs 27, 159 and 162-66 of Dr. Klibanov’s declaration (Ex. 2012) and Sections 157:9-160:19, 171:16-179:10, and 185:24-189:6 of the April 20, 2015 deposition of Dr. Kydonieus (Ex. 1049) as improper testimony under FRE 602 and 703, because this declaration and deposition testimony relies upon either (i) Ex. 2015 or 2032; (ii) hearsay testimony by Dr. Tiemessen (Ex. 2053 or 2061); or (iii) unsupported statements and data from the ’023 patent specification without an accompanying affidavit in contravention of 37 C.F.R. § 42.61(c). Petitioners further move the Board under § 42.61(c) to exclude Patent Owners’ improper reliance on the ’023 patent specification in their Response (Paper 25, at 19-20).

To the extent that Patent Owners rely on Ex. 2059 or Dr. Schöneich’s testimony regarding the exhibit in their Observations to Dr. Schöneich’s April 18, 2015 deposition, Petitioners respectfully submit that any such Observations are

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