

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UMICORE AG & CO. KG

Petitioner

v.

BASF CORPORATION

Patent Owner

Case IPR2015-01123

Patent 8,404,203

**OBJECTIONS TO PATENT OWNER'S EVIDENCE CITED
IN ITS FORMAL RESPONSE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Umicore AG & Co. KG (“Umicore” or “Petitioner”) hereby objects to the exhibits cited and relied upon in Patent Owner’s February 12, 2016 response and the associated Declaration of Dr. Michael Tsapatsis on the following grounds. For each objected to exhibit, the pertinent Federal Rule of Evidence (“FRE”) or other rule that gives rise to the objection is provided, along with a brief summary of the basis of the objection.

I. Exhibits 2018 to 2035

1. Ex. 2018 – Declaration of Dr. Michael Tsapatsis. Petitioner objects to the following paragraphs of Ex. 2018:

Paragraph	Objection
¶ 28	<p>FRE 402. This paragraph is irrelevant. The paragraph discusses purported research activities of BASF. The record is entirely bereft of any foundational evidence, including who conducted the referenced work, whether that person or persons had ordinary skill in the art, and the purpose of the work, among other things. Further, even if supported by adequate foundational evidence, the purported activities of BASF are irrelevant to claim scope and the express disclosure of the prior art references at issue.</p>

	<p>FRE 602. The statements and opinions in this paragraph are inadmissible because they are not based on the witness's own personal knowledge.</p> <p>FRE 702. The statements and opinions set forth in this paragraph are not based on sufficient facts or data.</p> <p>FRE 802. This paragraph improperly cites the out of court statements of Dr. Moini in Ex. 2003 to establish the truth of the matter asserted.</p>
¶ 47-49	<p>FRE 402. The paragraphs reference published papers purportedly discussing catalytic materials of BASF. The record is entirely bereft of necessary foundational evidence, including the purported characteristics of the material being tested, who conducted the referenced work, whether that person or persons had ordinary skill in the art, and the purpose of the work, among other things. Even if true, the purported activities of BASF are irrelevant to claim scope and the express disclosure of the prior art references at issue.</p> <p>FRE 602. The statements and opinions in these paragraphs are not based on the witness's own personal</p>

	<p>knowledge.</p> <p>FRE 702. The statements and opinions set forth in these paragraphs are not based on sufficient facts or data, and are not the result of the application of accepted and reliable principles and methods to the facts of the case.</p> <p>FRE 802. This paragraph improperly cites out of court statements in Exs. 2002, 2004, and 2010 to establish the truth of the matter asserted.</p>
¶¶ 54-55	<p>FRE 602. The statements and opinions in these paragraphs are inadmissible because they are not based on the witness's own personal knowledge.</p> <p>FRE 702. The statements and opinions set forth in these paragraphs are not based on sufficient facts or data, and are not the result of the application of reliable scientific principles and methods.</p>
¶ 61	<p>FRE 402. This paragraph cites a paper published in 2015, and thus is irrelevant for purposes of establishing the state of the art and the beliefs of those of ordinary skill as of the '662 and '203 patent's effective filing dates.</p>

	<p>FRE 702. The statements and opinions set forth in this paragraph are not based on sufficient facts or data.</p>
¶¶ 62-63	<p>FRE 602. The statements and opinions in this paragraph are inadmissible because they are not based on the witness's own personal knowledge.</p> <p>FRE 702. The statements and opinions set forth in these paragraph are not based on sufficient facts or data, and are not the result of the application of reliable scientific principles and methods.</p>
¶¶ 64-71	<p>FRE 602. The statements and opinions in these paragraphs are inadmissible because they are not based on the witness's own personal knowledge.</p> <p>FRE 802. These paragraphs improperly cite out of court statements in Ex. 2002, 2012, 2022, and 2024 to establish the truth of the matter asserted.</p>
¶¶ 73-75	<p>FRE 602. The statements and opinions in these paragraphs are inadmissible because they are not based on the witness's own personal knowledge.</p> <p>FRE 802. These paragraphs improperly cite out of court statements in Ex. 2021, 2022, 2023, and 2032 to establish</p>

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