

Paper No. ____
Filed: August 10, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

ASTRAZENECA AB,
Patent Owner.

Case IPR2015-01340
Patent RE44,186

PETITIONER MYLAN PHARMACEUTICALS INC.'S
OBJECTIONS TO EVIDENCE

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Mylan Pharmaceuticals Inc. (“Petitioner”) submits the following objections to Astrazeneca AB (“Patent Owner”)’s Exhibits as listed on Patent Owner’s Exhibit List filed on August 3, 2015, and any reference to or reliance on the foregoing Exhibits in Patent Owner’s Preliminary Response (“Preliminary Response”), Patent Owner’s Response (“Response”) or future filings by Patent Owner. Pursuant to 37 C.F.R. § 42.62, Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS

1. Objections to Exs. 2101-2116 and Exs. 2142-2144 and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 401, 402 (Irrelevant Evidence Inadmissible); F.R.E. 403 (Excluding Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 602 (Foundation); F.R.E. 701, 702 (Expert Foundation and Opinions); F.R.E. 801, 802, 803, 805 (Impermissible Hearsay); F.R.E. 901 (Authenticating Evidence).

Patent Owner describes Exs. 2101-2116 and Exs. 2142- 2144 as annual reports and/or Forms 20-F. By Patent Owner’s own admissions, Exs. 2101- 2116 and Exs. 2142-2144, which contain hundreds of pages of information, were created years after the alleged date of invention. Each of Exs. 2101-2116 and Exs. 2142-

2144 is so attenuated to the question of whether the claimed invention was obvious at the alleged time of the invention that Exs. 2101- 2116 and Exs. 2142- 2144 are each unduly prejudicial, misleading, and a waste of time. F.R.E. 401, 402, F.R.E. 403.

To the extent that Patent Owner relies on any statements in Exs. 2101- 2116 and Exs. 2142-2144 for the truth of the matter asserted, such statements are inadmissible hearsay and also have not been authenticated. F.R.E. 801, 802, 803, 805, 901. Moreover, Patent Owner provides no foundation for such statements as either lay testimony or expert testimony of any particular declarant. F.R.E. 602, 701, 702.

2. Objections to Exs. 2062, 2065, 2067, 2071-2073, 2082, 2084-2085, 2093, 2097-2098, 2125-2126, 2138, 2141, 2145-2147, 2159, 2161-2162, 2164-2165, 2171, 2176, and 2179-2180, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 401, 402 (Irrelevant Evidence Inadmissible); F.R.E. 403 (Excluding Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 602 (Foundation); F.R.E. 701, 702 (Expert Foundation and Opinions); F.R.E. 801, 802, 803, 805 (Impermissible Hearsay); F.R.E. 901 (Authenticating Evidence).

Patent Owner describes Exs. 2062, 2065, 2067, 2071-2073, 2077, 2079, 2081-2082, 2084-2085, 2093, 2097-2098, 2125-2126, 2138, 2141, 2145-2147,

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2159, 2161-2162, 2164-2165, 2171, 2176, and 2179-80 as various documents with asserted publication dates after the earliest claimed priority date of the invention of the patent at issue, in some cases more than a decade after the earliest claimed priority date. Because the asserted publication dates are later than the alleged date of invention for the patent at issue, the fact that the content of any of these exhibits was published on the asserted date, even if established by patent owner, is irrelevant to whether the claimed subject matter was obvious at the alleged time of the invention. F.R.E. 401, 402. Further, even if relevant, each of Exs. 2062, 2065, 2067, 2071-2073, 2077, 2079, 2081-2082, 2084-2085, 2093, 2097-2098, 2125-2126, 2138, 2141, 2145-2147, 2159, 2161-2162, 2164-2165, 2171, 2176, 2179-80, which were created after (and in some cases many years after) the alleged date of invention, is so attenuated to the question of whether the claimed invention was obvious at the alleged time of the invention, that each of these exhibits is unduly prejudicial, misleading, and a waste of time. F.R.E. 403.

To the extent that Patent Owner relies on any statements in any of Exs. 2062, 2065, 2067, 2071-2073, 2077, 2079, 2081-2082, 2084-2085, 2093, 2097-2098, 2125-2126, 2138, 2141, 2145-2147, 2159, 2161-2162, 2164-2165, 2171, 2176, and 2179-80 for the truth of the matter asserted, such statements are inadmissible hearsay and also have not been authenticated. F.R.E. 801, 802, 803, 805, 901. Moreover, Patent Owner provides no foundation for the statements as

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