

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

PHARMACOSMOS A/S,  
Petitioner,

v.

LUITPOLD PHARMACEUTICALS, INC.,  
Patent Owner.

---

IPR2015-01490; Patent 7,754,702 B2

---

**PATENT OWNER  
MOTION TO EXCLUDE**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	PATENT OWNER TIMELY OBJECTED .....	2
III.	ARGUMENT.....	3
A.	Exs. 1055 and 1056 and the Portions of Petitioner’s Opposition that Rely on Exs. 1055 and 1056 Should be Excluded .....	3
1.	Exs. 1055 and 1056 are Irrelevant (FRE 401,402) .....	3
2.	Exs. 1055 and 1056 are Inadmissible Hearsay(FRE 801, 802) .....	4
3.	The Portions of Petitioner’s Opposition that Rely on Exs. 1055 and 1056 Should be Excluded .....	4
B.	Ex. 1057 and the Portions of Petitioner’s Opposition that Rely on Ex. 1057 Should be Excluded .....	4
1.	Ex. 1057 is Irrelevant (FRE 401, 402).....	5
2.	Ex. 1057 is Inadmissible Hearsay (FRE 801, 802).....	5
3.	The Portions of Petitioner’s Opposition that Rely on Ex. 1057 Should be Excluded .....	6
C.	Ex. 1059 and the Portions of Petitioner’s Opposition that Rely on Ex. 1059 Should be Excluded .....	6
1.	Ex. 1059 is Irrelevant (FRE 401,402).....	6
2.	Ex. 1059 is Inadmissible Hearsay (FRE 801, 802).....	7
3.	Ex. 1059 is Not Authenticated (FRE 901).....	7
4.	The Portions of Petitioner’s Opposition that Rely on Ex. 1059 Should be Excluded .....	8

D. Ex. 1060 and the Portions of Petitioner’s Opposition that Rely on Ex. 1060 Should be Excluded .....8

1. Ex. 1060 is Not Relevant (FRE 401,402) .....8

2. Ex. 1060 is Inadmissible Hearsay (FRE 801, 802).....8

3. Ex. 1060 is Not Authenticated (FRE 901).....9

4. The Portions of Petitioner’s Opposition that Rely on Ex. 1060 Should be Excluded .....9

E. Ex. 1061 and the Portions of Petitioner’s Opposition that Rely on Ex. 1061 Should be Excluded .....9

1. Ex. 1061 is Not Relevant (FRE 401,402) .....9

2. Ex. 1061 is Inadmissible Hearsay (FRE 801, 802).....10

3. Ex. 1061 is Not Authenticated (FRE 901).....10

4. The Portions of Petitioner’s Opposition that Rely on Ex. 1061 Should be Excluded .....11

F. Ex. 1063 and the Portions of Petitioner’s Opposition that Rely on Ex. 1063 Should be Excluded .....11

1. Ex. 1063 is Inadmissible Hearsay (FRE 801, 802).....12

2. Ex. 1063 is Not Authenticated (FRE 901).....12

3. The Portions of Petitioner’s Opposition that Rely on Ex. 1063 Should be Excluded .....12

G. Petitioner’s Mischaracterization of Dr. Manzi’s Testimony Should be Excluded.....13

IV. CONCLUSION.....14

**TABLE OF AUTHORITIES**

**CASES**

*EMC Corp. v. PersonalwebTechs., LLC*, Case IPR2013-0084 (PTAB May 15, 2014) .....11

*FLIR Sys., Inc. v. Leak Surveys, Inc.*, IPR2014-00411 (PTAB Sep. 5, 2014).....12

*Ford Motor Co. v. Cruise Control Techs. LLC*, IPR2014-00291 (PTAB June 29, 2015) .....12

*In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 769 (C.D. Cal. 2004).....10

*St. Luke’s Cataract & Laser Inst., P.A. v. Sanderson*, No. 8:06-CV-223-T-MSS, 2006 WL 1320242 (M.D. Fla. May 12, 2006) .....11

*Standard Innovation Corporation v. Lelo, Inc.*, IPR2014-00148 (PTAB April 23, 2015) .....10

*United States v. Jackson*, 208 F. 3d 633 (7th Cir. 2000) .....10

*Victaulic Co. v. Tieman*, 499 F.3d 227, 236 (3d Cir. 2007), *as amended* (Nov. 20, 2007) ..... 10, 11

**STATUTES**

37 C.F.R. § 42.64(b)(1).....2

37 C.F.R. § 42.64(c).....1

**I. INTRODUCTION**

Under 37 C.F.R. § 42.64(c) and the Scheduling Order (Paper 12), Luitpold Pharmaceuticals (“Patent Owner”) moves to exclude Pharmacosmos Exs. 1055, 1056, 1057, 1059, 1060, 1061, and 1063, and the objected-to portions of Ex. 1054, the transcript from the deposition of Dr Adriana Manzi, on the following grounds:

<b>Exhibit</b>	<b>Reason to Exclude</b>
<b>1055/ 1056</b>	Exs. 1055 and 1056 (Wang and Online Supplementary Content) were published in <b><u>2015</u></b> and should not be relied on for evidence of the state of the art as of <b><u>January 2006</u></b> – the effective filing date, 9 years earlier.
<b>1057</b>	Same. Ex. 1057 (Keating) published in <b><u>2015</u></b> and should not be relied on for evidence of the state of the art as of <b><u>January 2006</u></b> – the effective filing date, nine years earlier.
<b>1059</b>	Same. Ex. 1059 (Galencia), purportedly published in <b><u>2016</u></b> , is not authenticated and should not be relied on for evidence of the state of the art as of <b><u>January 2006</u></b> , 10 years later.
<b>1060</b>	Ex. 1060 (mouse weight ) is not authenticated and not relevant.
<b>1061</b>	Ex. 1061 is an unauthenticated webpage purportedly from the San Diego Zoo website and not relevant
<b>1063</b>	Ex. 1063 is an unauthenticated article from a website accessed in <b><u>2016</u></b>

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.