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
REPLY TO OPPOSITION TO MOTION TO EXCLUDE

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I. INTRODUCTION

No witness for Petitioner has testified about the exhibits challenged in the motion to exclude and Petitioner served no supplemental evidence in response to Patent Owner's objections. There is no testimony at all about authentication or whether the exhibits satisfy any hearsay exception. Instead, Petitioner's opposition offers only attorney argument. The bases for admission have not been met.

II. Exs. 1055, 1056, 1057, 1059, 1060, 1061 Are Not Relevant

Exhibits 1055, 1056, 1057, and 1059 all have copyright and publication dates some 10 years after the filing date of January 2006. In *Liberty Mutual v. Progressive Casualty Insurance* (Opp. 4, 8), the post-filing references were published two or three years after the filing date but were still relevant to the state of the art at or *around* the time of filing because both references expressly cited information known before the filing date. CBM2012-00002, Paper 66, p. 64-65 (PTAB January 23, 2014). Here, in contrast, the identified exhibits are not from *around* the time of filing date **but nearly a decade later**! They are too late to be relevant and they do not purport to cite information known before the filing date.

Petitioner argues the data in Exs. 1055 and 1056 (Opp. 4) but provides no evidence these data were known to a POSITA at the time of filing. Indeed, Ex. 1055 seems to be the first publication of data from this cohort. Ex. 1055, p. 2 ¶3.

Petitioner asserts that Ex 1060 and 1061 are bases for "specific comparisons

to the claimed value" (Opp. 10), whatever that means. However, Petitioner provides no evidence that these weights of the animals are authentic or generalizable for this purpose. And, both references are dated so far after the filing date. Petitioner is using random data to try to discount the data originally presented in the patent.

III. Exs. 1055, 1056, 1057, 1059, 1060, 1061, 1063 Are Inadmissible Hearsay

Petitioner claims that the exhibits are cited for "what [they] describe" rather than "the truth of the matters asserted." Opp. 5,7, 8, 13, 14. This is contradicted by Petitioner's own statements which show they are certainly being used for their alleged truth! Ex. 1055 and 1056 are cited as reporting that "iron dextran was regularly used at high doses around the filing date" and that "iron dextran has been administered at high doses," respectively (Opp. 4); Ex. 1057 is cited as evidence that "Beshara discloses the properties of VIT-45" (Opp. 6) ; Ex. 1059 is cited as "demonstrating that iron dextran products are still currently used" (Opp. 8); Ex. 1060 is cited as "evidence of the weight of a mouse" (Opp. 10); Ex. 1061 is cited as "evidence of a weight of an elephant" (Opp. 12); Ex. 1063 is cited to prove that "only a single iron dextran product, Imferon ®, was recalled by the FDA" (Opp. 14). Petitioner's own statements show these references are cited for asserted *facts* not mere description. *Joy Techs, Inc. v. Manbeck* (Opp. 3) does not support Petitioner's argument. 751 F.Supp 225, 233 n.2 (D.D.C. 1990) (art cited under 35

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