

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC,
Petitioner,

v.

RESEARCH CORPORATION TECHNOLOGIES, INC.,
Patent Owner.

Case No. IPR2016-00204
Patent No. RE 38,551

**PATENT OWNER'S OBJECTION TO EVIDENCE UNDER
37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”), as applied by the Patent Trial and Appeal Board (“Board”), Patent Owner submits the following objections to evidence submitted by Petitioner with its Petition. These objections are timely filed within ten business days of the May 23, 2016 trial institution (Paper No. 19).

Patent Owner reserves the right to present further objections to these or additional Exhibits submitted by Petitioner, as allowed by the applicable rules or other authority, including without limitation upon conclusion of cross-examination of Dr. Binghe Wang.

Exhibit 1002 - Declaration of Dr. Binghe Wang

Exhibit 1002 cited in the Petition is inadmissible for at least the following reasons, including under the FRE:

Dr. Wang’s testimony in Exhibit 1002 is based on inadmissible hearsay, and it relies upon facts and data not reasonably relied upon in forming an expert opinion under FRE 703, including to the extent the testimony relies on Exhibit 1003, to which Patent Owner objects below.

Dr. Wang relies on Exhibit 1003, the Declaration of Dr. Clayton Heathcock from IPR2014-01126. As discussed below, Exhibit 1003 is hearsay, and is inadmissible under FRE 802. In addition, Exhibit 1003 is not the type of facts or data upon which an expert would rely in forming their own independent opinion as

required by FRE 702 and 703. Exhibit 1003 is merely the untested personal opinion of Dr. Heathcock, not even rising to the level of a peer-reviewed journal, much less a learned treatise.

Exhibit 1003 - Declaration of Dr. Clayton Heathcock from IPR2014-01126

Exhibit 1003 cited in the Petition is inadmissible for at least the following reasons, including under the FRE:

Dr. Heathcock's testimony in Exhibit 1003 is hearsay under FRE 801(c), and inadmissible under FRE 802.

Exhibit 1014 - Development of New Stereoisomeric Drugs

Exhibit 1014 cited in the Petition is inadmissible for at least the following reasons, including under the FRE:

Exhibit 1014 lacks authentication, and thus is inadmissible under FRE 901. Exhibit 1014 appears to be a printout of a website describing issues relating to the development of individual enantiomers and racemates. However, Petitioner may not rely on the content of the website printout without proper authentication. Petitioner has not provided the testimony of any witness with personal knowledge of the website, and therefore the exhibit lacks authentication. *See Nestle Oil OYJ v. Reg Synthetic Fuels, LLC*, IPR2013-00578, Paper 53 at 3–4 (P.T.A.B. Mar. 12, 2015).

Exhibit 1014 is inadmissible also under FRE 402 because it is not relevant. Although the printout states a “Publication Date” of “5/1/1992,” Petitioner provides no evidence that the content as it appears in the printout was publicly available as of that date. The webpage that is presently located at the URL printed in the footer of Exhibit 1014 indicates that it was “Last Updated” on “12/07/2014,” well-beyond the priority date in this case. Exhibit 1014 also lacks relevance to this proceeding because Petitioner does not substantively rely on it in either the Petition or the Declaration of Dr. Binghe Wang.

Exhibit 1021 - FDA Guideline for Industry

Exhibit 1021 cited in the Petition is inadmissible for at least the following reasons, including under the FRE:

Exhibit 1021 lacks authentication, and thus is inadmissible under FRE 901. Petitioner provides no evidence that Exhibit 1021 is what Petitioner claims it is or any evidence of the resource from which Exhibit 1021 was obtained.

Dated: June 7, 2016

Respectfully submitted,

By 

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