

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEPTUNE GENERICS, LLC,
APOTEX INC., APOTEX CORP.,
TEVA PHARMACEUTICALS USA, INC.,
and FRESENIUS KABI USA, LLC,

PETITIONERS,

V.

ELI LILLY & COMPANY,

PATENT OWNER.

Case IPR2016-00240¹
Patent 7,772,209

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S SUPPLEMENTAL
EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

¹ Cases IPR2016-01191 and IPR2016-01343 have been joined with the instant proceeding.

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner submits the following objections to the evidence that Patent Owner first served on October 24, 2016:

Evidence	Petitioner's Objections
Ex. 2125-2128	Relevance

The above-listed documents should be excluded because they are not relevant. *See* Fed. R. Evid. 401–403. For example, none of Exhibits 2125-2128 are cited by Patent Owner in its Response (Paper 32). Petitioner reserves its right to submit additional objections to these exhibits if and when Patent Owner cites or relies upon them.

Patent Owner also cites testimony from other IPR proceedings not joined with the present proceeding, as well as other litigation with different prior art at issue from the present proceeding. *See, e.g.*, Exs. 2125, 2126.

Evidence	Petitioner's Objections
Exs. 2125	Hearsay

The above-listed document should be excluded because it is hearsay and Patent Owner cannot establish a hearsay exception for admissibility. *See* Fed. R. Evid. 801(c)(2).

Evidence	Petitioner's Objections
Exs. 2125	Fed. R. Evid. 602, 702-703

The above-listed document should be excluded because it contains content over which the testifier has no personal knowledge, as well as putative expert

testimony that is unqualified, unreliable, and based on facts or data that experts in the field would not reasonably rely upon. *See* Fed. R. Evid. 602, 702-703; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). For example, Exhibit 2125 contains testimony from Clet Niyikiza regarding topics about which he had no personal knowledge, and for which he is not qualified to testify as an expert.

Evidence	Petitioner's Objections
Ex. 2125	37 C.F.R. § 42.53

The above-listed document should be excluded because it contains trial testimony that is not submitted in the form of an affidavit and, despite requests to Patent Owner, an opportunity for cross-examination has thus far been denied. *See* 37 C.F.R. §§ 42.51(b)(1)(ii), 42.53.

October 31, 2016

Respectfully Submitted,

/Sarah E. Spires/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served on the counsel for Patent Owner a true and correct copy of the foregoing Petitioner's Objections to Patent Owner's Supplemental Evidence Pursuant to 37 C.F.R. § 42.64(b)(1), by electronic means on October 31, 2016 at the following addresses of record:

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