

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERIGEN PHARMACEUTICALS LIMITED, ARGENTUM
PHARMACEUTICALS LLC,

Petitioner

v.

JANSSEN ONCOLOGY, INC.,

Patent Owner

Case IPR2016-00286¹
Patent 8,822,438 B2

**PETITIONERS' OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

¹ Case IPR2016-01317 has been joined with this proceeding.

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioners Amerigen Pharmaceuticals Limited and Argentum Pharmaceuticals LLC (collectively, “Petitioners”) object under the Federal Rules of Evidence to the admissibility of the documents identified below submitted by Patent Owner, Janssen Oncology, Inc. (“Janssen”), in the Patent Owner’s Response in this *inter partes* review.

Petitioners’ objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed and served within five (5) business days of the filing of Patent Owner’s Response on October 4, 2016, Paper No. 33. Petitioners’ objections provide notice to Janssen that Petitioners may move to exclude these exhibits under 37 C.F.R. § 42.64(c).

1. Petitioners object to JSN 2005 because it has not been properly authenticated as required by Fed. R. Evid. 901/902. Petitioners further object to this exhibit under Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC §102. This exhibit is further objected to under Fed. R. Evid. 402/403 because it is not relevant to any issue in this case. This exhibit is further objected to as hearsay pursuant to Fed. R. Evid. 801/802/803. This exhibit contains out-of-court statements by non-parties that Janssen apparently seeks to use to prove the truth of the matter asserted, and Janssen does not provide any basis for the Patent Trial and Appeal Board to conclude that they fall within any hearsay exception.

2. Petitioners object to JSN 2006 because it has not been properly authenticated as required by Fed. R. Evid. 901/902. Petitioners further object to this exhibit under Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC §102. This exhibit is further objected to under Fed. R. Evid. 402/403 because it is not relevant to any issue in this case. This exhibit is further objected to as hearsay pursuant to Fed. R. Evid. 801/802/803. This exhibit contains out-of-court statements by non-parties that Janssen apparently seeks to use to prove the truth of the matter asserted, and Janssen does not provide any basis for the Patent Trial and Appeal Board to conclude that they fall within any hearsay exception.

3. Petitioners object to JSN 2009 pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102. This exhibit is further objected to pursuant to Fed. R. Evid. 402/403 because it is not relevant to any issue in this case.

4. Petitioners object to JSN 2013 because it has not been properly authenticated as required by Fed. R. Evid. 901/902. This exhibit is further objected to pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102. This exhibit is further objected to pursuant to Fed. R. Evid. 402/403 because it is not relevant to any issue in this case. This exhibit is further objected to as hearsay pursuant to Fed. R. Evid. 801/802/803. This exhibit contains out-of-

court statements by non-parties that Janssen apparently seeks to use to prove the truth of the matter asserted, and Janssen does not provide any basis for the Patent Trial and Appeal Board to conclude that they fall within any hearsay exception.

5. Petitioners object to JSN 2014 pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102.

6. Petitioners object to JSN 2015 pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102.

7. Petitioners object to JSN 2016 pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102.

8. Petitioners object to JSN 2017 pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102.

9. Petitioners object to JSN 2019 because it has not been properly authenticated as required by Fed. R. Evid. 901/902. This exhibit is further objected to pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102. This exhibit is further objected to pursuant to Fed. R. Evid. 402/403 because it is not relevant to any issue in this case. This exhibit is further objected to as hearsay pursuant to Fed. R. Evid. 801/802/803. This exhibit contains out-of-court statements by non-parties that Janssen apparently seeks to use to prove the

truth of the matter asserted, and Janssen does not provide any basis for the Patent Trial and Appeal Board to conclude that they fall within any hearsay exception.

10. Petitioners object to JSN 2026 pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102. This exhibit is further objected to pursuant to Fed. R. Evid. 402/403 because it is not relevant to any issue in this case.

11. Petitioners object to Appendices B, E, E-1, and E-2 of JSN 2044 as lacking foundation as required by Fed. R. Evid. 1006 because the underlying facts or data from which these exhibit(s) were prepared have not been explained and there is not a sufficient factual basis for these exhibits. Petitioners further object to these exhibits under FRE 901/902 for lack of proper authentication and foundation and pursuant to FRE 702 because the factual bases and circumstances surrounding the preparation of these exhibits have not been explained.

12. Petitioners object to JSN 2050 pursuant to Fed. R. Evid. 402/403 to the extent it is relied upon as prior art under 35 USC 102. This exhibit is further objected to because it has not been properly authenticated as required by Fed. R. Evid. 901/902. This Exhibit is further objected to under Fed. R. Evid. 106 as incomplete.

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