

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANDOZ INC.,
APOTEX INC., and APOTEX CORP.,
EMCURE PHARMACEUTICALS LTD.,
HERITAGE PHARMA LABS INC.,
HERITAGE PHARMACEUTICALS INC.,
GLENMARK PHARMACEUTICALS, INC., USA,
GLENMARK HOLDING SA,
GLENMARK PHARMACEUTICALS, LTD., MYLAN LABORATORIES
LIMITED, TEVA PHARMACEUTICALS,
FRESENIUS KABI USA, LLC and WOCKHARDT BIO AG
Petitioners,

v.

ELI LILLY & COMPANY,
Patent Owner.

Case No: IPR2016-00318¹
Patent No. 7,772,209

PATENT OWNER'S OBJECTIONS TO SUPPLEMENTAL EVIDENCE

¹ Cases IPR2016-01429, IPR2016-01393, and IPR2016-01340 have been joined
with the instant proceeding.

Patent Owner Eli Lilly & Company (“Lilly”) hereby objects pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”) to the admissibility of certain purported supplemental evidence served by Petitioner Sandoz Inc. on January 17, 2017 in connection with its Petition for *Inter Partes* Review. The exhibits objected to, and grounds for Lilly’s objections, are listed below. Lilly also objects to Petitioner’s reliance on or citations to any objected evidence in its papers.

Some of the exhibits served by Sandoz Inc. on January 17, 2017 were introduced at depositions in this proceeding, and Lilly objected to certain of those exhibits at the depositions as required by 37 C.F.R. § 42.64(a). Nothing contained herein shall be deemed to withdraw any of Lilly’s objections to deposition evidence or the requirement that evidence to cure those objections must have been provided during the deposition, *see id.*

I. IDENTIFICATION OF CHALLENGED EVIDENCE AND GROUNDS FOR OBJECTIONS

A. Exhibit 1064

Lilly objects to Exhibit 1064 under FRE 802 because it is inadmissible hearsay, specifically trial testimony from Dr. Bruce Chabner in a different proceeding, *Eli Lilly v. Teva Parenteral Meds., Inc. et al.*, 1:10-cv-01376-TWP-DKL (S.D. Ind.). Lilly further objects to Exhibit 1064 as incomplete as it does not include Dr. Chabner’s direct or re-direct testimony. It therefore should be

excluded under FRE 106, 401, 402, and 403. Lilly also objects to Exhibit 1064 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time and needlessly presenting cumulative evidence in this compressed proceeding.

B. Exhibit 1065

Lilly objects to Exhibit 1065 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this compressed proceeding. Exhibit 1065 was published in 2004 and, therefore, bears no relevance to what the person of ordinary skill in the art would have known by the relevant date. Therefore, Exhibit 1065 should be excluded under FRE 402 and 403.

C. Exhibit 1073

Lilly objects to Exhibit 1073 under FRE 802 because it is inadmissible hearsay, specifically deposition testimony from Dr. Bruce Chabner in a different proceeding, *Eli Lilly v. Teva Parenteral Meds., Inc. et al.*, 1:10-cv-01376-TWP-DKL (S.D. Ind.). Lilly also objects to Exhibit 1073 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time and needlessly presenting cumulative evidence in this compressed proceeding.

Lilly also objects to Exhibit 1073 because it contains hundreds of pages of extraneous materials that appear to be other exhibits in this proceeding, are not related to Exhibit 1073, and should not be included in the same exhibit with Dr. Chabner's deposition testimony from *Eli Lilly v. Teva Parenteral Meds., Inc. et al.*, 1:10-cv-01376-TWP-DKL (S.D. Ind.), even were that deposition testimony otherwise admissible. Lilly incorporates by reference herein any objections it has made to those other materials and reserves the right to interpose objections based on the use, if any, to which the extraneous materials in Exhibit 1073 may be put.

D. Exhibit 1130

Lilly objects to Exhibit 1130 under FRE 802 because it is inadmissible hearsay, specifically deposition testimony from Dr. Steven Zeisel in a different proceeding, *Eli Lilly v. Teva Parenteral Meds., Inc. et al.*, 1:10-cv-01376-TWP-DKL (S.D. Ind.). Lilly also objects to Exhibit 1130 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time and needlessly presenting cumulative evidence in this compressed proceeding.

E. Exhibit 1131

Lilly objects to Exhibit 1131 under FRE 802 because it is inadmissible hearsay, specifically trial testimony from Dr. Steven Zeisel in a different proceeding, *Eli Lilly v. Teva Parenteral Meds., Inc. et al.*, 1:10-cv-01376-TWP-

DKL (S.D. Ind.). Lilly also objects to Exhibit 1131 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time and needlessly presenting cumulative evidence in this compressed proceeding.

Date: January 24, 2017

Respectfully submitted,

/David M. Krinsky/

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