UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANDOZ INC.,
APOTEX INC., 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 USA, INC.,
FRESENIUS KABI USA, LLC, and WOCKHARDT BIO AG,

Petitioners

v.

ELI LILLY AND COMPANY,

Patent Owner.

Case IPR2016-00318[1]
U.S. Patent 7,772,209

PETITIONER SANDOZ INC.'S MOTION TO EXCLUDE EVIDENCE

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

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I. INTRODUCTION

Petitioner Sandoz Inc. ("Sandoz") moves pursuant to 37 C.F.R. § 42.64(c) to exclude Exhibit 2116 and Paragraphs 24-28 and 44-78 of Exhibit 2118. Sandoz moves to exclude these exhibits as inadmissible pursuant to Fed. R. Evid. 106, 602, 702, 802, and 37 C.F.R. § 42.53.

II. EXHIBIT 2116 (DR. NIYIKIZA'S TESTIMONY IN A PRIOR PROCEEDING) SHOULD BE EXCLUDED

On October 7, 2016, Sandoz timely objected to Exhibit 2116, which consists of 102 pages from the August 22, 2013 direct trial testimony of Dr. Clet Niyikiza, the sole inventor listed on the face of the patent at issue in this IPR. Paper No. 39, Pet. Obj. at 7-8. This testimony was given in litigation, to which Sandoz was not a party, *Eli Lilly & Co. v. Teva Parenteral Meds., Inc.*, No. 1:10-CV-1376 (S.D. Ind.) ("Teva Litigation"). Lilly relies on 37 pages of Exhibit 2116 in its Patent Owner Response, citing to the exhibit nine times. *See* Paper No. 36, PO Resp. at 10-12, 57, 59. As explained below, the testimony in Exhibit 2116 should be excluded for multiple reasons: (A) as hearsay under Fed. R. Evid. 802; (B) improper expert testimony under Fed. R. Evid. 602 and 702; (C) an improper attempt to circumvent the right to cross-examination in violation of the Board's rules under 37 C.F.R. § 42.51(b)(1)(ii); and (D) incomplete under Fed. R. Evid. 106.

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