

Paper No. ____
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN LABORATORIES LIMITED

Petitioner,

v.

AVENTIS PHARMA S.A.

Patent Owner.

Case IPR2016-00712

Patent No. 8,927,592

PETITIONER MYLAN LABORATORIES LIMITED'S
NOTICE OF OBJECTION TO EVIDENCE SERVED ON DECEMBER 23, 2016

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Mylan Laboratories Limited (“Petitioner”) submits the following objections to Aventis Pharma S.A. (“Patent Owner”)’s Exhibits 2114-2115, 2123-2126, 2127-2134, 2138, 2146, 2149, 2150-2161, 2163-2166, 2168-2175, 2176, 2178-2179, 2181-2183, 2189, 2192, 2196-2200, 2202, 2204-2206, 2208-2209, 2211-2212, 2218-2222, 2225, 2227, 2229, 2231, 2232 as listed on Patent Owner’s Exhibit List filed on December 23, 2016, and any reference to or reliance on the foregoing Exhibits in Patent Owner’s Response (“Response”), Contingent Motion to Amend, or future filings by Patent Owner. As required by 37 C.F.R. § 42.62, Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS

1. Objections to Exs. 2123-2126, 2168, 2183, 2192, 2205, 2209, 2212, 2219, 2221, 2232, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 401, 402 (Irrelevant Evidence Inadmissible); F.R.E. 403 (Excluding Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 602 (Foundation); F.R.E. 701, 702 (Expert Foundation and Opinions); F.R.E. 801, 802, 803, 805 (Inadmissible Hearsay); F.R.E. 901 (Authenticating Evidence).

Patent Owner describes Exs. 2123-2126, 2168, 2183, 2192, 2205, 2209, 2212, 2219, 2221, and 2232 as various documents with asserted publication dates after the earliest claimed priority date of the invention of the patent at issue, in some cases several years after the earliest claimed priority date. Because the asserted publication dates are later than the alleged date of invention for the patent at issue, the fact that the content of any of these exhibits was published on the asserted date, even if established by Patent Owner, is irrelevant to whether the claimed subject matter was obvious at the alleged time of the invention. F.R.E. 401, 402. Further, even if relevant, each of Exs. 2123-2126, 2168, 2183, 2192, 2205, 2209, 2212, 2219, 2221, and 2232, which were created after (and in some cases several years after) the alleged date of invention, is so attenuated to the question of whether the claimed invention was obvious at the alleged time of the invention, that each of these exhibits is unduly prejudicial, misleading, and a waste of time. F.R.E. 403.

To the extent that Patent Owner relies on any statements in any of Exs. 2123-2126, 2168, 2183, 2192, 2205, 2209, 2212, 2219, 2221, and 2232 for the truth of the matter asserted, such statements are inadmissible hearsay and also have not been authenticated. F.R.E. 801, 802, 803, 805, 901. Moreover, Patent Owner provides no foundation for the statements as either lay testimony or expert testimony of any particular declarant. F.R.E. 602, 701, 702.

2. Objections to Exs. 2114-2115, 2138, 2151-2155, 2157, 2159-2160, 2163-2164, 2167- 2169, 2221, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 401, 402 (Irrelevant Evidence Inadmissible); F.R.E. 403 (Excluding Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 602 (Foundation); F.R.E. 701, 702 (Expert Foundation and Opinions); F.R.E. 801, 802, 803, 805 (Inadmissible Hearsay); F.R.E. 901 (Authenticating Evidence).

Patent Owner describes Exs. 2114-2115, 2138, 2151-2155, 2157, 2159-2160, 2163-2164, 2167-2169, and 2221 as printouts from various web sites. Exs. 2114-2115, 2138, 2151-2155, 2157, 2159-2160, 2163-2164, 2167-2169, and 2221 purport to have been printed from the internet in 2016, and none of the documents printed in Exs. 2115, 2138, 2151-2153, 2157, 2159-2160, 2163-2164, 2167, 2169, or 2221 purport to have existed prior to 2015 or 2016 . The fact that the content of these exhibits was publicly available in 2015 or 2016, even if established by Patent Owner, is irrelevant to whether the claimed subject matter was obvious at the alleged time of the invention. F.R.E. 401, 402. Further, even if relevant, Exs. 2115, 2138, 2151-2155, 2157, 2159-2160, 2163-2164, 2167-2169, and 2221, each of which appears to have been created years after the alleged date of invention, is so attenuated to the question of whether the claimed invention was obvious at the

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