

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.
Petitioner,

v.

ALLERGAN, INC.
Patent Owner.

Case IPR2016-01127 (US 8,685,930 B2)
Case IPR2016-01128 (US 8,629,111 B2)
Case IPR2016-01129 (US 8,624,556 B2)
Case IPR2016-01130 (US 8,633,162 B2)
Case IPR2016-01131 (US 8,648,048 B2)
Case IPR2016-01132 (US 9,248,191 B2)

**PETITIONER MYLAN PHARMACEUTICALS INC.'S
NOTICE OF OBJECTION TO EVIDENCE¹**

¹ The word-for-word identical paper is filed in each proceeding identified in the caption pursuant to the Board's Scheduling Order (Paper 10).

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Mylan Pharmaceuticals Inc. (“Petitioner”) submits the following objections to Allergan, Inc. (“Patent Owner”)’s Exhibits 2011, 2015, 2017, 2021, 2026, 2027, 2028, 2030-2035, 2038, 2042, 2044, 2046-2053, 2055-2057, 2060-2066, 2068-2069, and 2071-2074 as listed on each List of Exhibits filed by Patent Owner in each of Patent Owner’s Responses (“PORs”) on March 20, 2017, and any reference to or reliance on the foregoing Exhibits in the PORs 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. 2011, 2015, 2021, 2032, 2034-2035, 2042, 2047-2050, 2052-2053, 2060, 2068-2069, 2071, 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. 2011, 2015, 2021, 2032, 2034-2035, 2042, 2047-2050, 2052-2053, 2060, 2068-2069, and 2071, as various documents either

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purporting to have been published after the claimed invention date of the patents or not purporting to have been published at all. To the extent that the publication date of any of these exhibits is later than the alleged date of invention for the patents at issue, the fact that the content of such exhibit 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, such exhibits are so attenuated to the question of whether the claimed invention was obvious at the alleged time of the invention, that they are unduly prejudicial, misleading, and a waste of time. F.R.E. 403.

To the extent that Patent Owner relies on these exhibits or on any statements in these exhibits for the truth of the matter asserted, such statements are inadmissible hearsay when offered by Patent Owner 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. 2030-2031, 2074, 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

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Opinions); F.R.E. 801, 802, 803, 805 (Inadmissible Hearsay); F.R.E. 901 (Authenticating Evidence).

Patent Owner describes Exs. 2030-2031, and 2074, as various web page printouts not purporting to have been published before the earliest claimed invention date of the patents. To the extent that the publication date of any of these exhibits is later than the alleged date of invention for the patents at issue, the fact that the content of such exhibit 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, such exhibits are so attenuated to the question of whether the claimed invention was obvious at the alleged time of the invention, that they are unduly prejudicial, misleading, and a waste of time. F.R.E. 403. Moreover, the documents themselves lack foundation and lack authentication. F.R.E. 602, 902.

To the extent that Patent Owner relies on these exhibits or on any statements in these exhibits for the truth of the matter asserted, such statements are inadmissible hearsay when offered by Patent Owner 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.

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