Filed: October 27, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., TEVA PHARMACEUTICALS USA, INC. and AKORN INC.,[1]
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 8,642,556 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'S NOTICE OF OBJECTION TO EVIDENCE

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[1] Cases IPR2017-00576 and IPR2017-00594, IPR2017-00578 and IPR2017-00596, IPR2017-00579 and IPR2017-00598, IPR2017-00583 and IPR2017-00599, IPR2017-00585 and IPR2017-00600, and IPR2017-00586 and IPR2017-00601, have respectively been joined with the captioned proceedings. 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), Petitioner submits the following objections to Exhibits 2106-2111 as listed on each List of Exhibits filed by the St. Regis Mohawk Tribe ("Tribe") and any reference to or reliance on the foregoing Exhibits in Tribe's filings. 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 EX2106, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 402 (Relevance); 403 (Prejudice); F.R.E. 701, (lay testimony) F.R.E. 702 (expert testimony); 37 C.F.R. §42.65 (underlying data); F.R.E. 801, 802, 803, 805 (Inadmissible Hearsay).

Tribe describes EX2106 as "Richard Baker, American Invents Act Cost the U.S. Economy over $1 Trillion, Patently-O (June 8, 2015), https://patentlyo.com/patent/2015/06/america-invents-trillion.html." Tribe relies on this exhibit to claim that "the AIA's implementation has resulted in the decline in the value of U.S. patents in the *trillions* of dollars." Reply at 13 (emphasis in original).

This exhibit has no relevance to any issue properly before the Board for decision. Instead, Tribe provides the exhibit to evoke prejudice against these proceedings and "the prior administration's implementation" of the AIA. Reply at

13-14. But prejudice against the these proceedings is not a basis for dismissal under chapter 31 of the Patent Code (35 U.S.C.). EX2106 is inadmissible under F.R.E. 402 and under F.R.E. 403.

Additionally, this exhibit is not testimony, yet Tribe relies on statements therein to prove the truth of the matters asserted. To the extent Tribe relies on EX2106 or on any statements in it for the truth of the matter asserted, such statements are inadmissible hearsay. F.R.E. 801, 802, 803, 805. Moreover these statements are not properly supported as either lay or expert testimony and EX2106 fails to disclose sufficiently the underlying data relied upon. F.R.E. 701, 702; 37 C.F.R. §42.65.

2. Objections to EX2107, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 402 (Relevance); 403 (Prejudice); F.R.E. 701, (lay testimony) F.R.E. 702 (expert testimony); 37 C.F.R. §42.65 (underlying data); F.R.E. 801, 802, 803, 805 (Inadmissible Hearsay).

Tribe describes EX2107 as "The Roots of Innovation, U.S. Chamber International IP Index (Fifth Ed. February 2017)." Tribe relies on this exhibit to claim that the "Chamber of Commerce report attributes" a decline in the U.S. patent system "specifically to *inter partes* review and its 'high rate of trial and of rejection … with challenges … disproportionately funded by bad faith actors and with steeply increasing defense costs for patent holders.'" Reply at 14 (ellipses and

italics in original). EX2107 discusses a "constantly shrinking, gap between the U.S and other economies," and explains that "[o]ne reason for this shrinking gap is the continued refinement of the Index as an assessment tool," *i.e.*, a change in methodology. Far from concluding that IPR challenges are "disproportionately funded by bad faith actors," EX2107 merely asserts that this is "considered" to be the case "by some experts" who remain unidentified by EX2107.

This exhibit has no relevance to any issue properly before the Board for decision. Instead, Tribe provides the exhibit to evoke prejudice against these proceedings and "the prior administration's implementation" of the AIA. Reply at 13-14. But prejudice against these proceedings is not a basis for dismissal under chapter 31 of the Patent Code (35 U.S.C.). EX2107 is inadmissible under F.R.E. 402 and under F.R.E. 403.

Additionally, this exhibit is not testimony, yet Tribe relies on statements therein to prove the truth of the matters asserted. To the extent Tribe relies on EX2107 or on any statements in it for the truth of the matter asserted, such statements are inadmissible hearsay. F.R.E. 801, 802, 803, 805. Moreover these statements are not properly supported as either lay or expert testimony and fail to disclose sufficiently the underlying data relied upon. F.R.E. 701, 702; 37 C.F.R. §42.65.

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