

Filed: September 29, 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)

PETITIONERS' NOTICE OF OBJECTION TO EVIDENCE

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), Petitioners submit the following objections to Exhibits 2086, 2087 and 2100-2103 as listed on each List of Exhibits filed by the St. Regis Mohawk Tribe (“SRMT”) and two unlisted URLs in its motion to dismiss (“Motion”), and any reference to or reliance on the foregoing Exhibits in SRMT filings. As required by 37 C.F.R. §42.62, Petitioners’ objections below apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS

1. Objections to EX2100, EX2101, EX2102, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 402 (Relevance); 403 (Prejudice); 801, 802, 803, 805 (Inadmissible Hearsay).

SRMT describes EX2100 as “National Congress of American Indians, *Current Tax Needs in Indian Country*”; EX2101 as “National Congress of American Indians, *Securing Our Futures*”; and EX2102 as “National Congress of American Indians, *Taxation*”.

SRMT relies on these exhibits to provide critiques of the impacts of Federal taxation and development policies on Tribes. The Board has no power to address these policies, any remedy must come from Congress. The exhibits have no relevance to patent law or to any issue properly before the Board for decision.

Instead, SRMT provides the exhibits to evoke sympathy. Assuming *arguendo* the

truth of the statements in the exhibits and the justification of the critiques, sympathy for SRMT or Tribes generally is not a basis for dismissal under chapter 31 of the Patent Code (35 U.S.C.). EX2100, EX2101 and EX2102 are inadmissible under F.R.E. 402 and under F.R.E. 403.

Additionally, these exhibits are not testimony, yet SRMT relies on their statements to prove the truth of the matter asserted. These exhibits are thus used to provide hearsay statements without exception. To the extent SRMT relies on EX2100, EX2101 and EX2102, or on any statements in them for the truth of the matter asserted, such statements are inadmissible hearsay. F.R.E. 801, 802, 803, 805.

2. Objections to EX2086, EX2087 and EX2103, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 106 (Incomplete Writing).

SRMT describes EX2086 as an “Assignment Agreement (Long form)”; EX2087 as a “Patent License Agreement”; and EX2103 as a recorded assignment of the involved patents.

Each of these exhibits individually, and all three in combination, is an incomplete representation of the totality of transactions between SRMT and Allergan affecting the involved patents. In fairness, all of the documents reflecting the scope and nature of the transactions between SRMT and Allergan affecting the involved patents must be considered together. F.R.E. 106.

3. Objections to URLs, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 802 (Inadmissible Hearsay).

In the Motion, SRMT cites two URLs without providing corresponding exhibits: <https://www.srmt-nsn.gov/about-the-tribe> and <https://www.srmt-nsn.gov/economic-development>.

To the extent SRMT relies on these URLs or on any statements in these URLs for the truth of the matter asserted, such statements are inadmissible hearsay. F.R.E. 801, 802, 803, 805.

III. CONCLUSION

The aforementioned exhibits and URLs are not admissible for the reasons stated above.

Respectfully submitted,

Dated: September 29, 2017

/ Steven W. Parmelee /
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