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Paper 33
Entered: June 12, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., TEVA PHARMACEUTICALS USA, INC., and AKORN INC.
Petitioners,

v.

ALLERGAN, INC.,
Patent Owner.

Case IPR2016-01127 (8,685,930 B2)
Case IPR2016-01128 (8,629,111 B2)
Case IPR2016-01129 (8,642,556 B2)
Case IPR2016-01130 (8,633,162 B2)
Case IPR2016-01131 (8,648,048 B2)
Case IPR2016-01132 (9,248,191 B2) [1]

Before SHERIDAN K. SNEDDEN and CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

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[1] This order addresses issues that are the same in the identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are authorized to use this style heading when filing a single paper in each proceeding, provided that such heading includes a footnote attesting that "the word-for-word identical paper is filed in each proceeding identified in the heading."

In an email correspondence sent to the Board June 7, 2017, Petitioners requested a conference call to resolve a dispute between the parties regarding the scope of our discovery order entered May 31, 2017. The relevant portion of the email reads as follows:

> The parties appear to agree that the data underlying Schiffman Exhibits B, D, E, F and Attar Exhibits C and D is clinical trial data, not PK data, but Patent Owner's position is that the Board's discovery order does not require the production of the data underlying these particular exhibits unless it is PK data.

A conference call was held on June 9, 2017 between respective counsel for Petitioners and Patent Owner, and Judges Snedden and Paulraj. On the call, we agreed with Patent Owner that the language in our order expressly refers to "the pharmacokinetic ("PK") data underlying Schiffman Exhibits B–F and Attar Exhibits B–D." *See e.g.*, Paper 28, IPR2016-01127. We further explained, however, that in order for us to fully consider Schiffman Exhibits B, D, E, F and Attar Exhibits C and D (Ex. 1004, 198–242), the underlining clinical trial data would need to be produced. Patent Owner indicated that, while its Patent Owner Reponses reference the Schiffman and Attar declarations,[2] Schiffman Exhibits B, D, E, F and Attar Exhibits C and D are not necessary to support its case.

In view of Patent Owner's representation that it does not rely on Schiffman Exhibits B, D, E, F and Attar Exhibits C and D to support its Patent Owner Reponses, we limit the scope of our discovery order to PK data only, and exclude clinical trial data. As the parties agree that the data underlying Schiffman Exhibits B, D, E, F and Attar Exhibits C and D is clinical trial data, not PK data, Schiffman Exhibits B, D, E, F and Attar

[2] *See e.g.*, Paper 16, 21 in IPR2016-01127.

Exhibits C and D are outside the scope of our discovery order. Furthermore, because Patent Owner will not produce the clinical trial data underlying Schiffman Exhibits B, D, E, F and Attar Exhibits C and D, those exhibits and related testimony are entitled to no weight and will not be considered in determining patentability of the challenged claims. 37 C.F.R. § 42.65.

Accordingly, it is hereby:

SO ORDERED.

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