

Filed: November 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

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 2113 as listed on each List of Exhibits filed by the St. Regis Mohawk Tribe (“Tribe”) on November 17, 2017, 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 EX2113, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 106 (incomplete); F.R.E. 402 (relevance); 403 (prejudice); F.R.E. 603 (unsworn testimony); F.R.E. 801, 802, 803, 805 (inadmissible hearsay); F.R.E. 901 (authenticity).

Tribe describes EX2113 as “Excerpts of Chief Judge David Rushke’s Testimony at 11/09/17 PPAC Quarterly Meeting.” Tribe filed EX2113 on November 17, 2017 without first contacting Petitioners to meet and confer and without authorization from the Board to make a supplemental filing or to submit supplemental information. As far as Petitioners are aware, Tribe failed to even request authorization for such a filing. Tribe also failed to satisfy the requirements for submitting supplemental information.

Tribe’s own description of EX2113 indicates that Tribe submitted only excerpts of the “testimony,” which partial transcript contains many errors. The

transcript also does not purport to be a complete transcription of the excerpts included, but merely a “computer transcription” of those sections. For these reasons, the document is incomplete under F.R.E. 106 and inadmissible.

EX2113 lacks relevance to the instituted grounds of the petitions and the merits of these proceedings. EX2113 is also riddled with errors. To give just two examples, the document refers repeatedly to remands of patent cases to the PTAB from the “Fifth Circuit,” and the PTAB being “as religious as possible.” The lack of relevance and likelihood of prejudice and waste of time from this incomplete and error-filled transcript each justify exclusion of the exhibit under F.R.E. 402-403.

Tribe characterizes EX2113 as containing a partial account of “testimony” given outside the present proceedings. However, Tribe offers no evidence that EX2113 contains testimony of any kind, much less testimony complying with the oath or affirmation requirements of F.R.E. 603. The word “testimony” does not even appear in EX2113 itself. Moreover, EX2113 and any assertions contained therein are inadmissible hearsay when offered for the truth of the matter asserted. F.R.E. 801, 802, 803, 805. Tribe also fails to offer competent evidence authenticating the statements contained in EX2113 as the statements of the purported declarant. F.R.E. 901.

III. CONCLUSION

Exhibit 2113 should be stricken as an unauthorized filing and should be excluded from evidence if not stricken for the reasons stated above.

Respectfully submitted,

Dated: November 27, 2017

/ Steven W. Parmelee /

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Reg. No. 31,990

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