

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACRUX DDS PTY LTD., ACRUX LIMITED,
ARGENTUM PHARMACEUTICALS LLC,
Petitioners,

v.

KAKEN PHARMACEUTICAL CO., LTD. and
VALEANT PHARMACEUTICALS INTERNATIONAL, INC.,
Patent Owner.

Case IPR2017-00190¹
Patent 7,214,506 B2

**PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION TO
EXCLUDE UNDER 37 C.F.R. § 42.64(c)**

¹ Case IPR2017-01429 has been joined with the instant proceeding.

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I. INTRODUCTION

Pursuant to the Scheduling Order (Paper No. 13), Acrux DDS PTY Ltd., Acrux Limited, and Argentum Pharmaceuticals LLC (collectively, “Petitioners”) oppose Patent Owner’s Motion to Exclude (Paper No. 58, “Motion”). Patent Owner (“PO”) failed to carry its burden of proving entitlement to the relief requested. *See* 37 C.F.R. §§ 42.20(c), 42.62(a). Given “the Board’s discretion to assign the appropriate weight to be accorded to evidence... it is better to have a complete record of the evidence submitted by the parties than to exclude particular pieces.” *Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*, CBM2012-00002, Paper 66 at 60 (PTAB Jan. 23, 2014). Thus, for the reasons discussed in detail below, the Motion should be denied.

II. ARGUMENT

A. The Ogura Reference (Ex. 1012) Is Not Hearsay Because PO Has Repeatedly Admitted That It Published In 1999.

PO’s allegation that Ogura’s publication date is hearsay lacks merit for several reasons. *First*, PO is the institutional author of Ogura (Ex. 1012) and admitted Ogura’s October 1999 publication date in its Information Disclosure Statement (“IDS”) listing “Ogura, Hironobu et al., Chem. Pharm. Bull, Vol. 47 (No. 10), p. 1417-1425, (October, 1999),” during prosecution of the ’506

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