

PUBLIC VERSION

Paper _____
Filed: January 12, 2018

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' REPLY IN SUPPORT OF THEIR 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

AcruX DDS PTY Ltd., AcruX Limited, and Argentum Pharmaceuticals LLC (collectively, “Petitioners”) respectfully submit this Reply in further support of their Motion to Exclude (Paper No. 51, “Motion”). Patent Owner’s (“PO”) Opposition (Paper No. 70, “Opp.”) amounts to no more than an improper sur-reply² that does not address the majority of arguments presented in the Motion and, for the reasons discussed in the Motion and below, the Motion should be granted.

II. ARGUMENT

A. Mr. Thomas’s Testimony Does Not Meet the Requirements of FRE 702

Contrary to PO’s assertions, information relating to marketing strategies (and including Philidor Rx Services’s business practices) utilized to obtain the Jublia sales upon which Mr. Thomas relies is relevant to commercial success because “...not all marketplaces are equal, and... context matters.” *Captioncall, LLC v. Ultratec, Inc.*, IPR2015-00637, Paper 98, 73 (PTAB Sept. 7, 2016) (citations omitted). *See also, B/E Aero., Inc. v. C&D Zodiac, Inc.*, No. 2016-1496, 2017 U.S. App. LEXIS 19106, at *15-16 (Fed. Cir. Oct. 3, 2017) (commercial

² The bulk of PO’s arguments are improper sur-reply. *See Opp.*, 2-4, 6, 8, 9-11; *Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*, CBM2012-00002, Paper 66, 62 (PTAB Jan. 23, 2014). Petitioners disagree with these improper arguments, but will not respond to them here.

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