

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

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

Case: IPR2017-00190¹
U.S. Patent No. 7,214,506

**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 37 C.F.R. § 42.64(c) and the Scheduling Order (Paper No. 13), Kaken Pharmaceutical Co., Ltd. and Valeant Pharmaceuticals International, Inc. (collectively “Patent Owner”) hereby move to exclude from the record certain exhibits under the Federal Rules of Evidence for lack of relevance, lack of authenticity, and/or hearsay, and to exclude portions of Dr. Walters’ declarations as he is not qualified to testify as an expert.

II. ARGUMENT

A. The Board Should Exclude Petitioner’s Documentary Evidence That Is Unauthenticated and/or Hearsay

1. The *Ogura* Reference (Exhibit 1012) Should Be Excluded as It Is Inadmissible Hearsay

On November 2, 2016, Petitioner filed Exhibit 1012, Ogura et al., CHEM PHARM. BULL. 47(10) 1417-1425 (1999) [hereinafter “*Ogura*”]. Petitioner relied on *Ogura* in Grounds 1-3 of its petition for institution. Paper No. 1 at 4. Patent Owner timely filed objections to *Ogura* on May 15, 2017. See Paper No. 15 at 2 (objecting that, inter alia, “Ex. 1012 appears to be inadmissible hearsay under FRE 801, 802, 803.”)

Fed R. Evid. 801 defines hearsay as “a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in

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