

Paper No. ____
Filed: May 26, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN TECHNOLOGIES INC.,
Petitioner,

v.

MONOSOL RX, LLC,
Patent Owner.

Case IPR2017-00200
Patent No. 8,603,514

PETITIONER MYLAN TECHNOLOGIES INC.'S
NOTICE OF OBJECTION TO EVIDENCE

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Mylan Technologies Inc. (“Petitioner”) submits the following objections to Monosol RX LLC’s (“Patent Owner”)’s Exhibits 2001-2006, as listed on Patent Owner’s Exhibit List filed on February 16, 2017, and any reference to or reliance on the foregoing Exhibits in Patent Owner’s Preliminary Response (“Preliminary Response”) or future filings by Patent Owner. 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 Exs. 2001-2002 and Patent Owner’s reliance thereon

Grounds for Objection: F.R.E. 401, 402 (Irrelevant Evidence Inadmissible); F.R.E. 403 (Excluding Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 602 (Foundation); F.R.E. 701, 702 (Expert Foundation and Opinions); F.R.E. 801, 802, 803, 805 (Inadmissible Hearsay); 37 C.F.R. §42.53 (form for testimony)

Patent Owner describes Exs. 2001 and 2002, respectively, as a trial transcript in “CA No. 14-1574” and as a slip opinion in “Civil Case No. 1:13-1674. Patent Owner relies extensively on assertions by witnesses who have not submitted testimony in this proceeding and who have not been subjected to cross-

examination in this proceeding in violation of the Board's rule regarding the taking of testimony. 37 C.F.R. §42.53. Patent Owner also relies on such statements for the truth of the matter asserted, and such statements are inadmissible hearsay. F.R.E. 801, 802, 803, 805. Moreover, Patent Owner provides insufficient basis for the statements as lay or expert testimony. F.R.E. 602, 701, 702. Moreover, the trial transcript and opinion are not from a case in which Petitioner was a party, and the probative value of such assertions is thus outweighed by the likelihood of unfair prejudice to Petitioner. F.R.E. 401, 402, 403.

2. Objections to Exs. 2003-2006 and Patent Owner's reliance thereon

Grounds for Objection: F.R.E. 401, 402 (Irrelevant Evidence Inadmissible); F.R.E. 403 (Excluding Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 602 (Foundation); F.R.E. 701, 702 (Expert Foundation and Opinions); F.R.E. 801, 802, 803, 805 (Inadmissible Hearsay).

Patent Owner describes Exs. 2003-2006 as various documents with asserted publication dates after the earliest claimed priority date of the invention of the patent at issue, in some cases several years after the earliest claimed priority date. Because the asserted publication dates are later than the alleged date of invention for the patent at issue, the fact that the content of any of these exhibits was published on the asserted date, even if established by Patent Owner, is irrelevant to

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whether the claimed subject matter was obvious at the alleged time of the invention. F.R.E. 401, 402. Further, even if relevant, each of Exs. 2003-2006, which were created after (and in some cases several years after) the alleged date of invention, is so attenuated to the question of whether the claimed invention was obvious at the alleged time of the invention, that each of these exhibits is unduly prejudicial, misleading, and a waste of time. F.R.E. 403.

To the extent that Patent Owner relies on any statements in any of Exs. 2003-2006 for the truth of the matter asserted, such statements are inadmissible hearsay. F.R.E. 801, 802, 803, 805. Moreover, Patent Owner provides no foundation for the statements as either lay testimony or expert testimony of any particular declarant. F.R.E. 602, 701, 702.

III. CONCLUSION

The aforementioned exhibits were filed together with Patent Owner's Preliminary Response, prior to institution. Trial was instituted on May 12, 2017. These objections are made within 10 business days of institution pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

Dated: May 26, 2017

/ Steven W. Parmelee /
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