

Paper No. ____
Filed: July 31, 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 2007, 2009-2010, 2013, 2018-2024, 2026-2028, and 2031, as listed in Patent Owner’s Exhibit List filed on July 24, 2017, and any reference to or reliance on the foregoing Exhibits in Patent Owner’s Response (“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 paragraphs 15, 85 of Ex. 2007 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 Ex. 2007 as Declaration of Dr. Robert Langer. Patent Owner describes Ex. 2013 (cited in paragraphs 15 and 85 of Ex. 2007) as a trial transcript in “C.A. No. 1:14-cv-01451-RGA.” Patent Owner does not cite Ex. 2013 in its Response. Dr. Langer relies in paragraphs 15 and 85 on Ex. 2013 to

incorporate by reference his own hearsay statements and the hearsay statements of other declarants who Patent Owner has not agreed to submit for deposition 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 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 Ex. 2009 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); F.R.E. 901 (Authenticity); 37 C.F.R. §42.53 (form for testimony)

Patent Owner describes Ex. 2009 as a "Master's Thesis" with an asserted completion date in 2007, years after the earliest claimed priority date of the invention of the patent at issue. Ex. 2009 does not purport on its face to have been

published at any point in time. Because the asserted submission date is 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 whether the claimed subject matter was obvious at the alleged time of the invention. F.R.E. 401, 402. Further, even if relevant, Ex. 2009 which were created 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 it 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 Ex. 2009 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 with lay testimony or expert testimony for any particular declarant. F.R.E. 602, 701, 702. Patent Owner also fails to provide any evidence authenticating Ex. 2009 or statements made therein (F.R.E. 901) and has failed to make the alleged declarant of statements within Ex. 2009 available for deposition in this IPR proceeding. 37 C.F.R. §42.53 (form for testimony).

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