

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.

Petitioner

v.

QUALICAPS CO. LTD.

Patent Owner

Case IPR2017-00203

Patent No. 6,649,180

**PETITIONER MYLAN PHARMACEUTICALS INC.'S RESPONSE TO
PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE**

EXHIBIT LIST

Exhibit No.	Description
1001	United States Patent No. 6,649,180
1002	Complaint, <i>Warner Chilcott (US), LLC et al. v. Mylan Pharmaceuticals, Inc., et al.</i> , Case No. 2:15-cv-01740-JRG-RSP (E.D. Texas)
1003	Proof of Service of Complaint, Case No. 2:15-cv-01740-JRG-RSP (E.D. Texas)
1004	United States Patent No. 5,756,123 (“Yamamoto”)
1005	<i>The Japanese Pharmacopeia</i> (The Society of Japanese Pharmacopeia, 13th ed. 1996) (“Japanese Pharmacopeia”)
1006	United States Patent No. 3,493,407 (“Greminger”)
1007	21 C.F.R. § 172.874 (1998)
1008	<i>National Formulary</i> (American Pharmaceutical Association, 12th ed. 1965)
1009	Handbook of Pharmaceutical Excipients (1986)
1010	File History of United States Patent No. 6,649,180
1011	Expert Declaration of Arthur H. Kibbe
1012	Shin-Etsu Chemical Co., Ltd. PHARMACOAT Technical Information Shin-Etsu Chemical Co., Ltd. TC-5 Technical Information
1013	Chichester, C.O., E.M. Mrak, and G.F. Stewart, “Utilization of Synthetic Gums in the Food Industry,” <u>Advances in Food Research, Volume 12, Technical Center, General Foods Corporation, Tarrytown, N.Y., 1963.</u>
1014	Deposition Transcript of Jason T. McConville, Ph.D., Case No. 2:15-cv-1471-JRG-RSP (E.D. Tex.), July 8, 2016

1015	Declaration Of Mr. Jonathan D. Olinger In Support Of Petitioner's Unopposed Motion For <i>Pro Hac Vice</i> Admission Under 37 C.F.R. § 42.10(C)
1016	United States Patent No. 5,756,123 ("Yamamoto") (<i>Served but not filed, June 14, 2017</i>)
1017	<i>The Japanese Pharmacopeia</i> (The Society of Japanese Pharmacopeia, 13th ed. 1996) ("Japanese Pharmacopeia") (<i>Served but not filed, June 14, 2017</i>)
1018	21 C.F.R. § 172.874 (1998) (<i>Served but not filed, June 14, 2017</i>)
1019	<i>National Formulary</i> (American Pharmaceutical Association, 12th ed. 1965) (<i>Served but not filed, June 14, 2017</i>)
1020	Handbook of Pharmaceutical Excipients (1986) (<i>Served but not filed, August 11, 2017</i>)
1021	Email exchange between counsel July 25, 2017 (<i>Served but not filed, August 11, 2017</i>)
1022	Email exchange between counsel August 4, 2017 (<i>Served but not filed, August 11, 2017</i>)
1023	Email exchange between counsel August 10, 2017 (<i>Served but not filed, August 11, 2017</i>)
1024	Mylan Pharmaceuticals Inc., Mylan Laboratories Limited, and Mylan Inc.'s Amended Notice Of Videotaped Deposition Of Representative(s) Of Qualicaps Co., Ltd. Pursuant To Federal Rule Of Civil Procedure 30(B)(6) (<i>Served but not filed, August 11, 2017</i>)
1025	Email exchange between counsel March 21, 2017 (<i>Served but not filed, August 11, 2017</i>)
1026	Email exchange between counsel April 25, 2017 (<i>Served but not filed, August 11, 2017</i>)
1027	Amended Docket Control Order, <i>Warner Chilcott (US), LLC v. Teva Pharmaceuticals USA, Inc.</i> , No. 2:15-cv-1471 (E.D. Tex.)

	May 19, 2017), ECF No. 165 (<i>Served but not filed, August 11, 2017</i>)
1028	Deposition Transcript of Jason T. McConville, Ph.D., August 17, 2017
1029	Reply Expert Declaration of Arthur H. Kibbe

I. Introduction

Petitioner provides the following Response to Patent Owner's Motion to Exclude certain evidence from the proceedings.

II. Argument

A. Exhibit 1011 – Dr. Kibbe's Declaration

Patent Owner's entire argument for excluding Ex. 1011 is based on the distorted presumption that Dr. Kibbe copied the Petition instead of the reality that Dr. Kibbe prepared his declaration with the help of counsel for Petitioner, who, needing very little argument to present a strong case of obviousness, made minimal changes to Dr. Kibbe's work product in drafting the Petition. Dr. Kibbe confirmed this in his deposition and reply declaration.

As Petitioner explained in addressing Patent Owner's character attack on Dr. Kibbe in its Reply, Dr. Kibbe was asked if he had "a copy of the petition while he was working on making changes and edits" to his declaration and he responded, "I don't think so." Ex. 2029, 25:21-24. Dr. Kibbe confirmed this in his declaration under penalty of perjury. Ex. 1029, ¶ 3. Patent Owner has no evidence that his original declaration constitutes the hearsay it suggests is excludable. And the cases

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