

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner

v.

ICOS CORPORATION
Patent Owner.

IPR2017-00323
Patent No. 6,943,166

PATENT OWNER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner submits the following objections to evidence served with the Petition for Inter Partes Review of U.S. Patent No. 6,943,166 (Paper No. 2).

Exhibit 1008- Patent Owner objects to Exhibit 1008 as lacking authentication under FRE 901 because sufficient evidence has not been provided to establish the authenticity, date of the exhibit, or its public availability prior to the critical date. No evidence establishes that Exhibit 1008 is what Petitioner claims it is. Patent Owner objects to Exhibit 1008 as not relevant, a waste of time, and not helpful to trier of fact under FRE 402 and 403 as there is no admissible evidence establishing its public availability prior to the critical date of the '166 patent. Patent Owner also objects to Exhibit 1008 as hearsay (FRE 802), e.g., offering the out of court statements of various reviewers for the truth of the matters asserted (e.g., 0037, 0052, 0070, 0095, 0126, 0128, 0132, 0139, 0146, 0155, 0173, 0188, 0211, 0217, 0223, 0238, 0245, 0251, etc.); and as hearsay within hearsay (FRE 805), e.g. offering the out of court statements of the drug sponsor (e.g., 0061, 0317, 0359, 0363, 0387), pharmacologists (e.g. 0039) and test subjects (e.g., 0061, 0070, 0122, 0125, 0138, 0145, 0150, 0184, 0196, 0203, 0208, 0215, etc.) for the truth of the matters asserted.

Exhibit 1010- Patent Owner objects to Exhibit 1010 as lacking authentication under FRE 901 because sufficient evidence has not been provided to

establish the authenticity or date of the exhibit. No evidence establishes that Exhibit 1010 is what Petitioner claims it is. Patent Owner objects to Exhibit 1010 as not relevant, a waste of time, and not helpful to trier of fact under FRE 402 and 403 as it is dated in 2015 and accessed in 2016, years after the relevant critical date of the '166 patent. Patent Owner also objects to Exhibit 1010 as hearsay (FRE 802), e.g., offering the out of court statements of the author of the document for the truth of the matter asserted.

Exhibit 1014- Patent Owner objects to Exhibit 1014 as lacking authentication under FRE 901 because sufficient evidence has not been provided to establish the authenticity, date of the exhibit, or its public availability prior to the critical date. No evidence establishes that Exhibit 1014 is what Petitioner claims it is. Patent Owner objects to Exhibit 1014 as not relevant, a waste of time, and not helpful to trier of fact under FRE 402 and 403 as there is no admissible evidence establishing its public availability prior to the critical date of the '166 patent. Patent Owner also objects to Exhibit 1014 as hearsay (FRE 802), e.g., offering the out of court statements of the author of the document for the truth of the matter asserted.

Exhibit 1019- Patent Owner objects to Exhibit 1019 as lacking authentication under FRE 901 because sufficient evidence has not been provided to establish the authenticity, the date of the exhibit, or its public availability prior to

the critical date. No evidence establishes that Exhibit 1019 is what Petitioner claims it is. Patent Owner objects to Exhibit 1019 as not relevant, a waste of time, and not helpful to trier of fact under FRE 402 and 403 as there is no admissible evidence establishing its public availability prior to the critical date of the '166 patent. Patent Owner also objects to Exhibit 1019 as hearsay (FRE 802), e.g., offering the out of court statements of the authors of the document for the truth of the matter asserted.

Exhibit 1020- Patent Owner objects to Exhibit 1020 as lacking authentication under FRE 901 because sufficient evidence has not been provided to establish the authenticity, the date of the exhibit, or its public availability prior to the critical date. No evidence establishes that Exhibit 1020 is what Petitioner claims it is. Patent Owner objects to Exhibit 1020 as not relevant, a waste of time, and not helpful to trier of fact under FRE 402 and 403 as there is no admissible evidence establishing its public availability prior to the critical date of the '166 patent. Patent Owner also objects to Exhibit 1020 as hearsay (FRE 802), e.g., offering the out of court statements of the authors of the document for the truth of the matter asserted; and as hearsay within hearsay (FRE 805), e.g., offering the out of court statements of Eli Lilly and Company, ICOS Corporation, George Rathmann, and August M. Watanabe for the truth of the matters asserted.

Exhibit 1021- Patent Owner objects to Exhibit 1021 as lacking authentication under FRE 901 because sufficient evidence has not been provided to establish the authenticity, the date of the exhibit, or its public availability prior to the critical date. No evidence establishes that Exhibit 1021 is what Petitioner claims it is. Patent Owner objects to Exhibit 1021 as not relevant, a waste of time, and not helpful to trier of fact under FRE 402 and 403 as there is no admissible evidence establishing its public availability prior to the critical date of the '166 patent. Patent Owner also objects to Exhibit 1021 as hearsay (FRE 802), e.g., offering the out of court statements of the author of the document for the truth of the matter asserted; and as hearsay within hearsay (FRE 805), e.g., offering the out of court statements of ICOS Corp., “former collaborators,” and unknown others (e.g. “[t]wo phase II studies, in 175 and 300 patients, have now been reported as completed”) for the truth of the matters asserted.

Exhibit 1026- Patent Owner objects to Exhibit 1026 as lacking authentication under FRE 901 because sufficient evidence has not been provided to establish the authenticity, the date of the exhibit, or its public availability prior to the critical date. No evidence establishes that Exhibit 1026 is what Petitioner claims it is. Patent Owner objects to Exhibit 1026 as not relevant, a waste of time, and not helpful to trier of fact under FRE 402 and 403 as there is no admissible

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