

Paper No. \_\_\_\_  
Filed: August 1, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APOTEX INC. AND  
APOTEX CORP.  
Petitioners,

v.

NOVARTIS A.G.,  
Patent Owner.

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Case IPR2017-00854  
Patent No. 9,187,405

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**PETITIONERS APOTEX INC. AND APOTEX CORP.'S  
NOTICE OF OBJECTIONS TO EVIDENCE**

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## I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Apotex Inc. and Apotex Corp. (“Petitioner”) submits the following objections to Novartis A.G. (“Patent Owner”)’s Exhibits 2003, 2005, 2013, 2015, 2016, 2017, 2018, and 2019, as listed on Patent Owner’s Exhibit List filed on May 3, 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 EX2003, and any Reference to/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, 703 (Expert Foundation and Opinions); F.R.E. 802 (Inadmissible Hearsay); 37 C.F.R. § 42.6(a)(3).

Petitioner objects to the paragraphs 5-7 and 56-57 of EX2003 as irrelevant, confusing, or a waste of time as these paragraphs are not cited in Patent Owner’s Preliminary Response. F.R.E. 401, 402, 403. Petitioner similarly objects to paragraphs 8-18, 19-26, 27-33, 36-43, 45, and 54-55 of EX2003 as irrelevant, confusing, or a waste of time as these paragraphs are cited in Patent Owner’s

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Preliminary Response only as part of long block citations that violate Board rules.

F.R.E. 401, 402, 403. 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”).

Petitioner further objects to Exhibit 2003 to the extent it relies upon any of Exhibits 2004, 2008-2012, or 2014 for the truth of the matter asserted. F.R.E. 802.

2. Objections to EX2005, and any Reference to/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, 703 (Expert Foundation and Opinions); F.R.E. 802 (Inadmissible Hearsay); 37 C.F.R. § 42.6(a)(3).

Petitioner objects to paragraphs 41-42 of EX2005 as irrelevant, confusing, or a waste of time as these paragraphs are not cited in Patent Owner’s Preliminary Response. F.R.E. 401, 402, 403. Petitioner similarly objects to paragraphs 1-21 and 24-32 of EX2005 as irrelevant, confusing, or a waste of time as these paragraphs are cited in Patent Owner’s Preliminary Response only as part of long block citations. F.R.E. 401, 402, 403. 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”).

Petitioner further objects to Exhibit 2005 to the extent it relies upon any of Exhibits 2013, 2015, 2016, 2017, or 2018 (which exhibits are individually discussed below). F.R.E. 602, 702, 402, 403.

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Petitioner further objects to Exhibit 2005 to the extent it relies upon any of Exhibits 2006, 2011, 2013-2018 for the truth of the matter asserted. F.R.E. 802.

3. Objections to EX2013, and any Reference to/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 (Authenticating Evidence).

Patent Owner describes EX2013 as a LinkedIn profile for a non-party who is not participating in this proceeding. EX2013 does not assert to have a publication date before the earliest claimed priority date of the invention of the patent at issue and is irrelevant to whether the claimed subject matter was obvious. EX2013 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 EX2013 for the truth of the matter asserted, such statements are inadmissible hearsay and also have not been authenticated. F.R.E. 801, 802, 803, 805, 901. 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.

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