

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX INC., APOTEX CORP., and
ARGENTUM PHARMACEUTICALS LLC,
Petitioners,

v.

NOVARTIS A.G.,
Patent Owner.

Case IPR2017-00854¹
Patent No. 9,187,405

PETITIONERS' NOTICE OF OBJECTIONS TO EVIDENCE

¹ Case IPR2017-01550 has been joined with this proceeding.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OBJECTIONS	1
	1. Objections to EX3002, and any Reference to/Reliance Thereon.....	1
III.	CONCLUSION	3

Case IPR2017-00854

Patent 9,187,405

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Apotex Inc. and Apotex Corp. (“Petitioner”) submits the following objections to Board Exhibit 3002, filed on August 11, 2017, and any reference to or reliance on the foregoing Exhibit in Board papers or future filings by the Board or by Patent Owner. Petitioner’s objections apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS

1. Objections to EX3002, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 106 (Incomplete Record); 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. 802 (Inadmissible Hearsay); 37 C.F.R. § 42.6(a)(3).

The Board’s Ex. 3002 is a copy of an email sent by Patent Owner to the Board requesting a conference call regarding scheduling the deposition of Petitioner’s expert. Patent Owner’s original email to the Board itself attached a separate email thread between the parties regarding their efforts to schedule the deposition. In Ex. 3002, the Board fused the Patent Owner’s email to the Board with the separate email thread between the parties into one document.

Ex. 3002 as it presently stands is prejudicial, lacks foundation, and is incomplete. Notably, the thread portion contains an email from Patent Owner’s

Case IPR2017-00854

Patent 9,187,405

counsel to Petitioner's counsel that is a one-sided and inaccurate representation of a meet-and-confer call the two parties had to try to resolve the scheduling difficulties. Patent Owner's email was sent to Petitioner a mere 9 minutes before the Patent Owner emailed the Board to request the conference call and attached the thread as a separate document. The thread is incomplete because it does not contain Petitioner's subsequent response to the Board which stated "Additionally, Petitioner finds Patent Owner's inclusion of self-serving and inaccurate emails objectionable and unhelpful to advancing a productive conversation on the matter."

Further, during the ensuing call with the Board on August 10, 2017, referenced in the Order (paper no. 16), counsel for Patent Owner stated that it had not provided a court reporter for the call because it considered the conference call to "be an off-the-record" discussion with the parties. Thus, for the Board to make the email thread between the parties an Exhibit in the proceeding is inconsistent with the intent stated by Patent Owner at the time of the call with the Board.

To the extent that the Board or Patent Owner relies on any statements in EX3002 for the truth of the matter asserted, such statements are inadmissible hearsay. F.R.E. 801, 802, 803, 805.

Case IPR2017-00854

Patent 9,187,405

III. CONCLUSION

The aforementioned Exhibit 3002 was filed with the Order on August 11, 2017. These objections are made to Ex. 3002 within 5 business days of said Order, pursuant to 37 C.F.R. § 42.64(b)(1).

Respectfully submitted,

Dated: August 18, 2017

/ Steven W. Parmelee /

Steven W. Parmelee, Lead Counsel

Reg. No. 31,990

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.