

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Celltrion, Inc.
Petitioner,

v.

Genentech, Inc.
Patent Owner

Patent No. 6,407,213

Inter Partes Review No. IPR2017-01374

**PETITIONER CELLTRION'S OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE EVIDENCE**

Patent Owner has sought to keep the Board from considering Exhibit 1193 in *two separate motions*. The present one, a motion to exclude, is improper, since it challenges Exhibit 1193 as untimely and outside the scope of a reply brief, and not on any evidentiary ground. Motions to exclude are reserved for challenging the admissibility of evidence under the Federal Rules of Evidence, not for arguing untimeliness and improper scope. *See, e.g., Liberty Mutual Ins. Co. v. Progressive Casualty Ins. Co.*, CBM2012-00002, Paper 66, at 62 (P.T.A.B. Jan. 23, 2014) (“[W]hile a motion to exclude may raise issues related to admissibility of evidence, it is not . . . a mechanism to argue that a reply contains new arguments or relies on evidence necessary to make out a prima facie case.”); *Altaire Pharms. Inc. v. Paragon Biotech, Inc.*, PGR2015-00011, Paper 38, at 2 (P.T.A.B. May 18, 2016). While Patent Owner purports to found its motion on Federal Rules of Evidence 401 and 402, the substance of Patent Owner’s argument is that Petitioner’s citation of Exhibit 1193 did not comply with 35 U.S.C. § 312(a), which relates to the requirements for a petition, or 7 C.F.R. § 42.23(b), which relates to the permissible scope of reply papers. Similarly, Patent Owner’s argument regarding Federal Rule of Evidence 403 asserts only that Exhibit 1193 was untimely, not any evidentiary defect. These arguments are not properly raised in a motion to exclude.

Patent Owner has separately filed a motion to strike Exhibit 1193 on the ground of timeliness, and Petitioner will address Patent Owner’s arguments in an

opposition to that motion. Since that is the appropriate procedural mechanism for challenging timeliness, the present motion to exclude should be denied and the issue decided in Patent Owner's motion to strike.

On the merits, to the extent the Board considers Patent Owner's objections under Rules 401, 402, and 403, Exhibit 1193 is highly relevant to the knowledge of a POSA regarding the use of human consensus sequences in humanized antibodies at the time the claimed subject matter was allegedly invented. As will be addressed in Petitioner's Opposition to Patent Owner's Motion to Strike, Petitioner properly raised Exhibit 1193 in its Reply. Therefore, the relevance of this exhibit is not outweighed by unfair prejudice. For these additional reasons, Exhibit 1193 should not be excluded from this proceeding.

Dated: July 3, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 3rd day of July, 2018, I caused a copy of this PETITIONER CELLTRION'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE by email on the lead and back up counsel for Patent Owners at:

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