

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICRO LABS LIMITED and  
MICRO LABS USA INC.,  
Petitioner,

v.

SANTEN PHARMACEUTICAL CO., LTD. and  
ASAHI GLASS CO., LTD.,  
Patent Owner.

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Case IPR2017-01434  
Patent 5,886,035

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Before JO-ANNE M. KOKOSKI, CHRISTOPER G. PAULRAJ, and  
DEBRA L. DENNETT, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

On August 8, 2018, a conference call was held between counsel for the parties and Judges Kokoski, Paulraj, and Dennett. Petitioner requested the conference to discuss Patent Owner's Motions for Observations Regarding Cross-Examination Testimony of Dr. Mitchell A. deLong (Paper 34) and Dr. Aron D. Rose (Paper 35) (collectively, "the Observations"). Petitioner requested that we expunge the Observations or, in the alternative, that we authorize Petitioner to file a motion to expunge the Observations, because, according to Petitioner, they do not comply with the Board's rules and guidance regarding such papers.

In particular, Petitioner contended that the Observations include improper arguments, are excessively long, and generally are not concise statements of relevance of precisely identified testimony to precisely identified arguments or portions of exhibits as required by the Scheduling Order. *See* Paper 12, 5. Petitioner confirmed, however, that it is able to respond to the Observations. Patent Owner disagreed with Petitioner's contentions, and argued that the Observations are proper.

We explained to the parties that we are capable of discerning proper and improper observations when considering them in rendering our final written decision in this proceeding. At that time, if we determine that the Observations (or any portion thereof) do not adhere to the Board's rules and guidance, we will disregard the Observations in their entirety (or the non-compliant portion thereof). Accordingly, we denied Petitioner's request to expunge the Observations, or, in the alternative, authorize Petitioner to file a motion to expunge the Observations.

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In consideration of the above, it is  
ORDERED that Petitioner's request that the Board expunge Patent  
Owner's Observations is denied; and

FURTHER ORDERED that Petitioner's alternative request for  
authorization to file a motion to expunge the Observations is denied.

PETITIONER:

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