

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PFIZER, INC., and
SAMSUNG BIOEPIS CO., LTD.,¹
Petitioners,

v.

GENENTECH, INC.,
Patent Owner.

Case IPR2017-01488
Patent 6,407,213

**PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION
TO EXCLUDE EVIDENCE PURSUANT TO 37 C.F.R. § 42.64²**

¹ Samsung Bioepis Co. Ltd.'s IPR2017-02139 has been joined with this proceeding. (IPR2017-02139, Paper 42.)

² All emphases within are added.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ARGUMENT	2
A. Mr. Buss's Declaration Should Not Be Excluded.....	2
1. Factual background	2
2. Mr. Buss's uncontroverted opinions are the product of reliable principles and methods, and will assist the Board	5
3. Mr. Buss's testimony regarding the use of humanized antibodies as therapeutic agents should not be excluded.....	9
4. PO's criticisms at most go to weight not admissibility, and anyway are moot as Mr. Buss's opinions are uncontroverted	12
B. A Motion To Exclude Is Not A Proper Vehicle For PO's Improper Reply Evidence Argument	15

..

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>1964 Ears, LLC v. Jerry Harvey Audio Holding, LLC</i> , IPR2016-00494, Paper 56 (July 19, 2017)	12
<i>Apple Inc. v. DSS Tech. Mgmt., Inc.</i> , IPR2015-00369, Paper 40 (June 17, 2016).....	12
<i>Blackberry Corp. v. Zipit Wireless, Inc.</i> , IPR2014-01508, Paper 49 (Mar. 29, 2016)	15
<i>Bouygues Telecom, S.A. v. Tekelec</i> , 472 F. Supp. 2d 722 (E.D.N.C. 2007)	8
<i>Camelbak Prods. v. Ignite USA, LLC</i> , IPR2015-01034, Paper 37 (June 7, 2016).....	12
<i>Dura Auto. Sys. of Indiana, Inc. v. CTS Corp.</i> , 285 F.3d 609 (7th Cir. 2002)	12, 13
<i>Flex-Rest, LLC v. Steelcase, Inc.</i> , 455 F.3d 1351 (Fed. Cir. 2006)	11
<i>Frontier Therapeutics v. Medac Gesellschaft Für Klinische</i> , IPR2016-00649, Paper 10 (September 1, 2016).....	6
<i>Helios Software, LLC v. Awareness Techs., Inc.</i> , CV 11-1259-LPS, 2015 WL 12806482 (D. Del. Apr. 13, 2015)	6
<i>Honeywell Int'l Inc. v. Universal Avionics Sys. Corp.</i> , 488 F.3d 982 (Fed. Cir. 2007)	14
<i>Nat'l Oilwell Varco, LP v. Tech. Indus. Inc.</i> , IPR2017-00860, Paper 34 (April 23, 2018)	12
<i>Primera Tech. v. Auto Mfg. Sys. Inc.</i> , IPR2013-00196, Paper 50 (July 17, 2014)	11
<i>Seaboard Lumber Co. v. U.S.</i> , 308 F.3d 1283 (Fed. Cir. 2002)	14

...

IPR2017-01488: Petitioners’ Opposition to PO’s Motion to Exclude Evidence

Sundance, Inc. v. DeMonte Fabricating Ltd.,
550 F.3d 1356 (Fed. Cir. 2008) 11

U.S. Gypsum Co. v. Lafarge N.A. Inc.,
670 F. Supp. 2d 737 (N.D. Ill. 2009).....6

Rules

Fed. R. Civ. P. 26 14

Fed. R. Evid. 401 15

Fed. R. Evid. 402 15

Fed. R. Evid. 702 12, 14

Fed. R. Evid. 703 13

Regulations

37 C.F.R. § 42.64 1

I. INTRODUCTION

Pursuant to the Joint Notice of Stipulation to Revise Schedule (Paper 53), Petitioners submit the following Opposition to PO's Motion to Exclude Evidence Pursuant to 37 C.F.R. § 42.64 (Paper 63). PO's motion should be denied.

First, PO has identified no basis to exclude Mr. Buss's declaration. As an initial matter, there is nothing improper in an expert serving a declaration mirroring that of another expert, particularly when supporting a copycat IPR petition. Mr. Buss did not merely "adopt" Dr. Ball's opinions; rather he carefully considered the same evidence and reached the same conclusions. Nor has PO identified any flaw in Mr. Buss's qualifications or analysis. As established by his declaration and testimony, Mr. Buss *does* meet the Board's definition of the person skilled in the art. And significantly, Mr. Buss's opinions remain *uncontroverted*—PO has not submitted evidence from *any* expert, much less one meeting the qualifications it says Mr. Buss must possess, disagreeing in any way with Mr. Buss's opinions. At base, to the extent not moot in the absence of any evidence refuting Mr. Buss's opinions, PO's complaints at most go to the weight to be given to those opinions.

Second, a motion to exclude is not the proper vehicle to raise "improper reply" arguments. It follows that PO's "relevance" and "prejudice" arguments on the same basis also are not properly raised here. Petitioners will address PO's assertions in this regard in its forthcoming opposition to PO's Motion to Strike (Paper 61).

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