

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' REPLY IN SUPPORT
OF THEIR MOTION TO EXCLUDE EVIDENCE²**

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

² All emphases within are added.

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I. PETITIONERS' MOTION IS PROCEDURALLY PROPER

Petitioners' motion clearly "present[s] an evidentiary basis to exclude" the challenged exhibits, including FRE 901-02, 801-03, 602, 401-03, and supporting caselaw excluding corroboration evidence. Mot. at 7-13. Petitioners timely objected on these bases and "[i]dentif[ied] where in the record th[ose] objection[s]...w[ere] made." *Id.* at 4 (citing Papers 33 at 2-26; 46 at 2-4; 55 at 1). PO asserts "corroboration" is not basis for exclusion, but insufficient authentication, hearsay, and lack of personal knowledge *are*, and "independent evidence of authenticity is required" for antedation. *Id.* at 10, citing *Neste Oil*, IPR2013-00578, Paper 52, 4-5.

II. PO'S UNRELIABLE NOTEBOOKS / INTERNAL DOCUMENTS

PO's opposition confirms its notebooks/internal documents are inadmissible. For notebooks, PO relies on "the individuals who created the documents," Opp. at 2-3, but provides no testimony from non-inventors Rowland, Hotaling and Carver, whose notebooks (along with Brady's, Exs. 2005-09) cannot corroborate as they do not show the tested antibodies met the claims. *See Medtronic, Inc. v. Norred*, IPR2014-00110, Paper 46 at 9 (Apr. 23, 2015). And having the inventors authenticate their own unwitnessed notebooks (Exs. 2001-04) is the very "circular" situation that is impermissible for corroboration. *Neste Oil*, IPR2013-00578, Paper 52 at 4 (Mar. 12, 2015); *Microsoft*, IPR2013-00293, Paper 33 at 52 (Oct. 14, 2014); *cf. Apator ApS v. Kamstrup*, 887 F.3d 1293, 1297 (Fed. Cir. 2018)("[A]n unwitnessed laboratory notebook, alone, cannot corroborate an inventor's testimony

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