

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 IPR2017-01489
Patent 6,407,213

PETITIONERS' MOTION TO EXCLUDE EVIDENCE²

¹ Samsung Bioepis Co. Ltd.'s IPR2017-02140 has been joined with this proceeding. (IPR2017-02140, Paper 40.)

² All emphases within are added.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF THE PRECISE RELIEF REQUESTED	4
III. ARGUMENT	4
A. PO’s Unreliable “Secondary Considerations” Opinions.....	4
B. PO’s Unreliable Notebooks and Internal Documents	7
C. Dr. Wilson’s Unreliable Validity Opinions	13
D. Improper Errata	14

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Am. Med. Sys. v. Laser Peripherals, LLC</i> , 712 F. Supp. 2d 885 (D. Minn. 2010).....	14
<i>Apple, Inc. v. Achates Reference Publishing, Inc.</i> , IPR2013-00080, Paper 61 (Jan. 21, 2014).....	14
<i>Chen v. Bouchard</i> , 347 F.3d 1299 (Fed. Cir. 2003)	7, 11
<i>Chen v. Bouchard</i> , Inter. No. 103,675, Paper No. 336, 2002 Pat. App. LEXIS 201 (B.P.A.I. Aug. 2, 2002).....	11
<i>Gnosis SPA v. S. Ala. Med. Sci. Found'n</i> , IPR2013-00116, Paper 68 (June 20, 2014).....	6
<i>Herbert v. Lisle Corp.</i> , 99 F.3d 1109 (Fed. Cir. 1996)	14
<i>In re Kao</i> , 639 F.3d 1057 (Fed. Cir. 2011)	5, 6
<i>In re Kubin</i> , 561 F.3d 1351 (Fed. Cir. 2009)	14
<i>Mahurkar v. C.R. Bard, Inc.</i> , 79 F.3d 1572 (Fed. Cir. 1996)	7
<i>MaxLinear, Inc. v. Cresta Tech. Corp.</i> , IPR2015-00594, Paper 90 (Aug. 15, 2016).....	12
<i>Medichem S.A. v. Rolabo, S.L.</i> , 437 F.3d 1157 (Fed. Cir. 2006)	10, 11
<i>Microsoft v. Surfcast</i> , IPR2013-00293, Paper 33 (Oct. 14, 2014)	11

..

IPR2017-01489: Petitioners’ Motion to Exclude Evidence

Neste Oil Oyj v. REG Synthetic Fuels, LLC,
IPR2013-00578, Paper 52 (Mar. 12, 2015)7, 10

NHK Seating of Am., Inc. v. Lear Corp.,
IPR2014-01200, Paper 29 (Feb. 2, 2016)13

In re NTP, Inc.,
654 F.3d 1279 (Fed. Cir. 2011)7

Procter & Gamble Co., v. Teva Pharm.,
566 F.3d 979 (Fed. Cir. 2009)10

Reese v. Hurst,
661 F.2d 1222 (CCPA 1981)8, 10

Riverbed Tech. v. Realtime Data LLC,
IPR2016-00978, Paper 67 (Oct. 30, 2017)12

Shimano, Inc. v. Globberide, Inc.,
IPR2015-00273, Paper 40 (June 16, 2016).....6

Vicor Corp. v. SynQor, Inc.,
603 Fed. Appx. 969 (Fed. Cir. 2015).....14

XpertUniverse Inc. v. Cisco Systems Inc.,
Civil No. 09-157-RGA slip. op. 608 (D. Del. Feb. 28, 2013)12

Rules

FRE 40112, 14

FRE 4026, 7, 12, 14

FRE 40312

FRE 60212

FRE 7026, 14

FRE 80111, 12

FRE 80211, 12

FRE 803(6)(D)11, 12

...

IPR2017-01489: Petitioners’ Motion to Exclude Evidence

FRE 80612
FRE 90110, 12
FRE 90210

Other Authorities

37 C.F.R. § 42.64(b)(1).....4
37 C.F.R. § 42.64(c).....1
(37 C.F.R. § 42.65)6
Office Trial Practice Guide, 77 Fed. Reg. 48,612, 48,642.....14

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.