

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' REPLY IN SUPPORT
OF THEIR 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. PETITIONERS' MOTION IS PROCEDURALLY PROPER.....	1
II. PO'S UNRELIABLE NOTEBOOKS / INTERNAL DOCUMENTS.....	1
III. PO'S UNRELIABLE "SECONDARY CONSIDERATIONS"	4
IV. DR. WILSON'S UNRELIABLE VALIDITY OPINIONS	5
V. IMPROPER ERRATA	5

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Apator ApS v. Kamstrup</i> , 887 F.3d 1293 (Fed. Cir. 2018)	1
<i>Chen v. Bouchard</i> , 347 F.3d 1299 (Fed. Cir. 2003)	3
<i>Invitrogen Corp. v. Clontech Labs.</i> , 429 F.3d 1052 (Fed. Cir. 2005)	3
<i>Medtronic, Inc. v. Norred</i> , IPR2014-00110, Paper 46 (Apr. 23, 2015).....	1
<i>Microsoft Corp. v. Surfcast, Inc.</i> , IPR2013-00293, Paper 33 (Oct. 14, 2014)	1
<i>Neste Oil OYJ v. Reg Synthetic Fuels, LLC</i> , IPR2013-00578, Paper 52 (March 12, 2015)	1
<i>NHK Seating of America, Inc. v. Lear Corp.</i> , IPR2014-01200, Paper 29 (Feb. 2, 2016).....	3
<i>SMF Holding Co. v. BASF</i> , IPR2015-00600, Paper 41 (Apr. 7, 2016).....	5
Rules	
FRE 401	1
FRE 402	1
FRE 403	1
FRE 602	1
FRE 801	1
FRE 802	1

..

IPR2017-01489: Petitioners' Reply in Support of Motion to Exclude Evidence

FRE 803 1
FRE 901 1
FRE 902 1

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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 32 at 2-26; 44 at 2-4; 52 at 1). PO asserts "corroboration" is not a 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 PO 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) ("unwitnessed laboratory notebook, alone, cannot corroborate an inventor's testimony of

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