

Filed: March 29, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS INC.

Petitioner

v.

POZEN INC. and HORIZON PHARMA USA, INC.

Patent Owners

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Case No. IPR2017-01995  
U.S. Patent No. 9,220,698

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**PETITIONER'S OBJECTIONS TO PATENT OWNERS' EXHIBIT**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Mylan Pharmaceuticals Inc. (“Petitioner”) objects to the admissibility of the following exhibit filed by Patent Owners Pozen Inc. and Horizon Pharma USA, Inc. (“Patent Owners”) in support of Patent Owners’ Request for Rehearing in the above-captioned *inter partes* review.

Petitioner’s objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed and served within five business days of the service of the evidence, on March 22, 2018. (Ex. 2010.) Petitioner’s objections provide notice to Patent Owners that Petitioner may move to exclude the exhibit under 37 C.F.R. § 42.64(c).

In this paper, a reference to “FRE” means the Federal Rules of Evidence, a reference to “CFR” means the Code of Federal Regulations, and “’698 patent” means U.S. Patent No. 9,220,698. All objections under FRE 801-803 (hearsay) apply to the extent Patent Owners rely on the exhibits identified in connection with that objection for the truth of the matter asserted therein.

The exhibit description below is from Patent Owners’ exhibit list and is used for identification purposes only. Use of the description does not indicate Petitioner’s agreement with the description or characterization of the document.

<b>Exhibit</b>	<b>Description</b>	<b>Objection</b>
2010	Email string from Mylan’s counsel, Robert D. Swanson from February 6, 2017 to February 15, 2017	A, B, C, E, N, O, R, V

Petitioner objects to paragraphs in the Patent Owners’ Rehearing Request that rely on the exhibit objected to in this Petitioner’s Objection to Evidence.

## Objection Key:

- A: FRE 801/802/803 (hearsay)
- B: FRE 901/902 (lacking authentication)
- C: FRE 402 (relevance) the document is not relevant to any issue in this IPR proceeding because the purported date of the document is after the filing date of the '698 patent or the prior art status is not clear
- D: FRE 402 (relevance) to the extent the document is relied upon for secondary considerations of nonobviousness, there is no nexus to the claimed compositions and methods
- E: FRE 403 (confusing, waste of time) the document is not relevant to any issue in this IPR proceeding because the purported date of the document is after the filing date of the '698 patent or the prior art status is not clear
- F: FRE 403 (confusing, waste of time) to the extent the document is relied upon for secondary considerations of nonobviousness, there is no nexus to the claimed compositions and methods
- G: FRE 702 (improper expert testimony) expert testimony that relies on the document is not based on sufficient facts or data and/or is not the product of reliable principles and methods
- H: FRE 703 (bases of expert opinion) expert testimony that relies on the document is unreliable because the document is not of a type reasonably relied upon by experts in the field
- I: FRE 106 (completeness) the document is incomplete and includes only a select portion of a larger document that in fairness should be considered along with this document
- J: FRE 701, 702 (improper expert testimony) improper expert testimony by a lay witness
- K: FRE 1001-1003 (best evidence)
- L: FRE 403, 901 (improper compilation)
- M: FRE 403 (cumulative)
- N: FRE 402 (relevance) the document is not relevant to any issue in the IPR proceeding
- O: FRE 403 (confusing, waste of time) the document is not relevant to any issue in the IPR proceeding
- P: No exhibit filed.
- Q: Expert testimony fails to identify with particularity the underlying facts or data on which the opinion is based, violating 37 C.F.R. § 42.65(a)

- R: FRE 602 (lack of personal knowledge)
- S: FRE 702/703 to the extent that the expert declarant relies on an exhibit objected to under grounds G and H, the testimony is (i) not based on sufficient facts or data and/or is not the product of reliable principles and methods and/or is (ii) is unreliable because the exhibit is not of a type reasonably relied upon by experts in the field
- T: FRE 1006 (improper summary)
- U: 37 C.F.R. § 42.65 (fails to provide underlying facts or data on which opinion is based)
- V: Exhibit is improper new evidence untimely filed with a request for rehearing, in violation of 37 C.F.R. § 42.71

March 29, 2018

Respectfully submitted,

/Brandon M. White/

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*Mylan Pharmaceuticals Inc.*

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served a true and correct copy of the foregoing: PETITIONER'S OBJECTIONS TO PATENT OWNERS' EXHIBIT by email to the electronic service addresses for Patent Owner:

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Dated: March 29, 2018

/Brandon M. White/  
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