

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLATWING PHARMACEUTICALS, LLC and
MYLAN PHARMACEUTICALS INC.,
Petitioners,

v.

ANACOR PHAMACEUTICALS, INC.,
Patent Owner.

Case No. IPR2018-00169¹
U.S. Patent No. 9,566,289

**PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE**

¹ Case No. IPR2018-01359 has been joined with this proceeding

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The exhibits Anacor has filed this proceeding are the type of scientific articles and publications that the Board regularly admits into evidence. Nothing in these documents comes close to suggesting that they are anything other than what they purport to be: the publicly available and peer-reviewed writings of practitioners in the fields of transungual drug delivery and boron chemistry. Anacor's experts, Dr. Lane and Dr. Reider, have cited to these documents as evidence supporting their opinions, including what the person of ordinary skill in the art ("POSA") would have known at the time the invention was made. There is nothing untoward about the manner in which Anacor and its experts have relied on the documentary evidence in this case.

In response to Anacor's documentary evidence, FlatWing has raised a host of form boilerplate objections that are without basis in law or fact. FlatWing tellingly cites no authority to support its twisted application of the Federal Rules of Evidence ("FRE") and the rules of evidentiary procedure before the Board. This is not surprising because the case law is to the contrary. FlatWing further fails to engage meaningfully with the record, including the self-authenticating indicia present throughout Anacor's exhibits, as well the portions of the record that expressly lay foundation and establish the authenticity of Anacor's cited evidence. FlatWing's motion to exclude (Paper 27, "Mot.") should be denied.

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