

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FLATWING PHARMACEUTICALS, LLC,  
*PETITIONER,*

v.

ANACOR PHARMACEUTICALS, INC.,  
*Patent Owner*

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Cases Nos. IPR2018-00168, -00169, -00170, and -00171

Patents Nos. 9,549,938, 9,566,289, 9,566,290, and 9,572,823

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**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE**

Pursuant to 37 C.F.R. § 42.64, Petitioner hereby and herewith submits the following objections to evidence. Petitioner submits the same set of objections in all four related *Inter Partes Review* patent trials, IPR2018-0168 (for U.S. Patent No. 9,459,938), IPR2018-0169 (for U.S. Patent No. 9,566,289), IPR2018-00170 (for U.S. Patent No. 9,566,290), and IPR2018-00171 (for U.S. Patent No. 9,572,823). Patent Owner made substantially the same arguments in each of its four responses. (*Patent Owner's Response*, IPR2018-00168, Paper #13; *Patent Owner's Response*, IPR2018-00169, Paper #13; *Patent Owner's Response*, IPR2018-00170, Paper #14; and *Patent Owner's Response*, IPR2018-00171, Paper #13.) Patent Owner's Exhibits 2002–2012 and 2015–2045 are identical in all four IPRs. The direct testimony of its witnesses differs primarily in identifying the claims of the patents in each IPR, and does not differ in the substance. (*Cf.*, IPR2018-00168 Ex. 2013, *Declaration of Paul J. Reider, Ph.D. in Support of Patent Owner's Response*; IPR2018-00169 Ex. 2013, *Declaration of Paul J. Reider, Ph.D. in Support of Patent Owner's Response*; IPR2018-00170 Ex. 2013, *Declaration of Paul J. Reider, Ph.D. in Support of Patent Owner's Response*; IPR2018-00171 Ex. 2013, *Declaration of Paul J. Reider, Ph.D. in Support of Patent Owner's Response*; IPR201800168 Ex. 2014, *Declaration of Majella E. Lane, Ph.D. in Support of Patent Owner's Response*; IPR2018-00169 Ex. 2014, *Declaration of Majella E. Lane, Ph.D. in Support of Patent Owner's*

*Response*; IPR2018-00170 Ex. 2014, *Declaration of Majella E. Lane, Ph.D. in Support of Patent Owner's Response*; IPR2018-00171 Ex. 2014, *Declaration of Majella E. Lane, Ph.D. in Support of Patent Owner's Response*.) Accordingly, this single consolidated set of objections is submitted in all four IPRs, with specific citations to each of the four responses and each of the four different direct testimony papers as appropriate.

Petitioner's objections are as follows:

**Ex. 2002** is or purports to be the Murthy May-2016 Dep.<sup>1</sup> marked at the cross-examination deposition of Dr. Murthy (Ex. 2018 Murthy 20-Aug-2018 Dep. at 13:20–15:8). Pursuant to 37 C.F.R. § 42.64, Petitioner reserves all objections made on the record at that deposition, including its objection under Federal Rule of Evidence (“FRE”) 106. Also, as stated on the record (Ex. 2018, Murthy 20-Aug-2018 Dep. at 7:24–8:23), the Petitioner agreed to allow the use of these depositions in prior related proceedings to the extent relevant to the issues in the current IPRs, but reserved the right to object on grounds including relevance to the extent testimony in that deposition is not relevant in this proceeding. Because Patent Owner cites only to Ex. 2002 at 88:12–89:16 and 91:4–11 (IPR2018-00168, Paper #13, at 20, 21; IPR2018-00169, Paper #13, at 20, 21; IPR2018-00170, Paper#14 at 20, 21; IPR2018-00171, Paper#13 at 20,

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<sup>1</sup> Transcript of Deposition of S. Narasimha Murthy, Ph.D. taken IPR2015-01776, IPR2015-01780, and IPR2015-01785 (May 4, 5, 6, and 12, 2016).

21), Petitioner objects to the all other testimony in Ex. 2002 not cited in Patent Owner's response on grounds of relevance under FRE 402 and as exceeding the scope of cross under 37 C.F.R. § 42.53.

**Ex. 2003** is or purports to be the Murthy Sep-2016 Dep.<sup>2</sup> marked at the cross-examination deposition of Dr. Murthy (Ex. 2018, Murthy 20-Aug-2018 Dep. at 15:9–17:19). Pursuant to 37 C.F.R. § 42.64, Petitioner reserves all objections made on the record at that deposition, including its objection under FRE 106. Also, as stated on the record (Ex. 2018, Murthy 20-Aug-2018 Dep. at 7:24–8:23), the Petitioner agreed to allow the use of these depositions in prior related proceedings to the extent relevant to the issues in the current IPRs, but reserved the right to object on grounds including relevance to the extent testimony in that deposition is not relevant in this proceeding. Because Patent Owner does not cite Ex. 2003 in any of Patent Owner's Responses, Petitioner objects to the entirety of Ex. 2003 on grounds of relevance under FRE 402 and as exceeding the scope of cross under 37 C.F.R. § 42.53.

**Ex. 2004** is or purports to be an article Nair 2009a<sup>3</sup> marked at the cross-examination deposition of Dr. Murthy (Ex. 2018 at 36:9–41:8). Pursuant to 37

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<sup>2</sup> Transcript of Deposition of S. Narasimha Murthy, Ph.D. taken IPR2015-01776, IPR2015-01780, and IPR2015-01785 (Sept. 17, 2016)

<sup>3</sup> Nair, Anroop B., Srinivasa M. Sammeta, Hyun D. Kim, Bireswar Chakraborty, Phillip M. Friden, and S. Narasimha Murthy. "Alteration of the diffusional

C.F.R. § 42.64, Petitioner reserves all objections made on the record at that deposition. Petitioner objects as inadmissible hearsay under FRE 801 to the quotations from and citations to Ex. 2004 in Patent Owner's Responses. (IPR2018-00168, Paper #13, at 2 & n.2, 4, 18, 34, and 41; IPR2018-00169, Paper #13 at 2 & n.2, 4, 19, 35, and 42; IPR2018-00170, Paper #14 at 2 & n.2, 4, 19, 34, and 41; IPR2018-00171, Paper #13 at 2 & n.2, 4, 18, 34, and 41.) Petitioner objects to the quotation from and citations to Ex. 2004 as inadmissible hearsay under FRE 801 in the direct testimony of Dr. Lane. (IPR2018-00168 Ex. 2014, Lane '938 Decl. ¶ 55 n.3; IPR2018-00169 Ex. 2014, Lane '289 Decl. ¶ 58 n.3; IPR2018-00170 Ex. 2014, Lane '290 Decl. ¶ 59 n.3; IPR2018-00171 Ex. 2014, Lane '823 Decl. ¶ 53 n.3.) Petitioner also objects under 37 C.F.R. § 42.53 to the use of Ex. 2004 as uncompelled direct testimony from the authors of Ex. 2004 without providing an affidavit in the form required by that provision. Petitioner also objects under FRE 703, to the use of Ex. 2004 as expert testimony from the authors of Ex. 2004 without properly qualifying them as experts. Petitioner also objects under 37 C.F.R. § 42.65, to the use of Ex. 2004 as expert testimony from the authors of Ex. 2004 without providing an affidavit meeting the requirements of that provision. Petitioner also objects under FRE 901, lack of authentication.

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barrier property of the nail leads to greater terbinafine drug loading and permeation." *International journal of pharmaceuticals* 375, no. 1–2 (2009): 22–27.

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