

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

SANOFI-AVENTIS DEUTSCHLAND GMBH,
Patent Owner.

Cases

IPR2018-01670 (Patent 8,679,069 B2)
IPR2018-01676 (Patent 8,603,044 B2)
IPR2018-01678 (Patent 8,992,486 B2)
IPR2018-01682 (Patent 9,526,844 B2)¹

Before HYUN J. JUNG, BART A. GERSTENBLITH, and
JAMES A. TARTAL, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
35 C.F.R. § 42.5(a)

¹ This Order is entered into each case. The parties are not authorized to use a multiple-case caption.

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On June 19, 2019, a conference call was held between counsel for Mylan Pharmaceuticals Inc. (“Petitioner”), counsel for Sanofi-Aventis Deutschland GmbH (“Patent Owner”), and Judges Jung, Gerstenblith, and Tartal. Patent Owner requested the conference to seek authorization to file a limited number of physical exhibits in the above-captioned proceedings. For the following reasons, Patent Owner’s request is *denied*.

Patent Owner indicated that the physical exhibits it intended to file would demonstrate functionality and other aspects of the devices disclosed by, for example, one or more references asserted in this proceeding. Petitioner expressed concerns with Patent Owner’s request, including the need to maintain a reviewable record and the limited relevance of such evidence to the challenges based on obviousness over the prior art.

First, we note that the Board does not have an established procedure in place to accept and keep physical evidence as part of an *inter partes* review record. Moreover, the importance of maintaining a publicly accessible record of the proceeding would not be promoted by the introduction of physical exhibits into the record. As stated in the Scheduling Order, the “Board has a strong interest in the public availability of trial proceedings.” *See, e.g.*, Paper 20, 3 in IPR2018-001670. Our rules require exhibits to be filed primarily electronically. 37 C.F.R. § 42.6(b). Finally, we are not persuaded that other means of supporting Patent Owner’s arguments are so insufficient to necessitate physical exhibits. In this regard, Patent Owner stated its intent to provide photographs and video of physical exhibits it intended to rely on in support of its arguments. To the extent Patent Owner suggested that such video would be insufficient to convey

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aspects that can only be perceived through handling the exhibits, we are not persuaded that handling of a physical exhibit properly constitutes evidence supporting patentability.

ORDER

In view of the foregoing, it is ORDERED that Patent Owner's request to file physical exhibits in this proceeding is *denied*.

PETITIONER:

Richard Torczon
Wesley Derryberry
Douglas Carsten
Jeffrey W. Guise
Nicole W. Stafford
Lorelei Westin
Arthur Dykhuis
Tasha Thomas
Franklin Chu
Elham F. Steiner
WILSON SONSINI GOODRICH & ROSATI
rtorczon@wsgr.com
wderryberry@wsgr.com
dcarsten@wsgr.com
jguise@wsgr.com
nstafford@wsgr.com
lwestin@wsgr.com
adykhuis@wsgr.com
tthomas@wsgr.com
ychu@wsgr.com
esteiner@wsgr.com

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PATENT OWNER:

Elizabeth Stotland Weiswasser
Anish R. Desai
Sudip K. Kundu
Kathryn M. Kantha
Adrian C. Percer
Brian C. Chang
William S. Ansley
Matthew D. Seiger
WEIL, GOTSHAL & MANGES LLP
elizabeth.weiswasser@weil.com
anish.desai@weil.com
sudip.kundu@weil.com
kathryn.kantha@weil.com
adrian.percer@weil.com
brian.chang@weil.com
sutton.ansley@weil.com
matthew.seiger@weil.com

W. Karl Renner
John S. Goetz
Joshua A. Griswold
Matthew S. Colvin
FISH & RICHARDSON P.C.
PTABInbound@fr.com