

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.
and PFIZER, INC,
Petitioners,

v.

SANOFI-AVENTIS DEUTSCHLAND GMBH,
Patent Owner.

Case IPR2018-01676
Patent No. 8,603,044

PETITIONER MOTION TO EXCLUDE
37 CFR §42.64(c)

The petitioner (Mylan) seeks exclusion of patent owner (Sanofi) exhibits 2001-2014, 2017-2026, 2100-2102, 2104-2107, 2111-2153, 2158-2201, 2203-2212, 2214-2218, 2223-2225, and the redirect testimony in Mylan exhibit 1054. Except as otherwise noted, the objections appear in Papers 22, 33 and 57.

I. ARGUMENT

Petitioner (“Mylan”) submits the following objections:

A. EX2001-EX2003 – Press Releases (PR Newswire)

EX2001-EX2003 should be excluded under Federal Rules of Evidence (FRE) 402-403. They are offered to show Mylan’s clinical development and commercialization of a follow-on insulin glargine product. Paper 10, 6. That Mylan is developing such a product is not relevant to any contested issue in this proceeding. Thus, EX2001-EX2003 lack relevance and risk confusing the issues.

B. EX2004, EX2005, EX2007– Sanofi Complaints, (D. Del.), (D.N.J.)

EX2004 and EX2005 should be excluded under FRE 402-403. EX2004 is offered to show Sanofi asserted the ’044 patent against another competitor. Paper 10, 6. EX2007 is offered to show that Sanofi asserted the ’044 patent in collateral litigation. Paper 10, 10. Whether the ’044 patent has been asserted is

not relevant to any contested issue in this proceeding. Thus, these exhibits lack relevance and risk confusing the issues.

C. EX2006 – Stipulation and Proposed Order, (D.N.J.)

EX2006 should be excluded under FRE 402-403. EX2006 is offered to show a joint request for a trial date in collateral litigation. Paper 10, 8; Paper 15, 2. This request is not relevant to any contested issue in this proceeding. Thus, EX2006 lacks relevance and risks confusing the issues.

D. EX2008-EX2010 – Mylan Invalidity Contentions, (D.N.J.)

EX2008-EX2010 should be excluded under FRE 402-403. These exhibits are offered to show that Mylan has referenced overlapping prior art as a basis for invalidity in the co-pending district court case. Paper 10, 11, 13, 15. That Mylan has referenced overlapping prior art in its invalidity contentions in the district court case is not relevant to any contested issue in this proceeding. Thus, they lack relevance and risk confusing the issues.

E. EX2011 –Service of Sanofi’s Responses (D.N.J.)

EX2011 should be excluded under FRE 402-403. EX2011 is offered to show the date on which Sanofi served its response to Mylan’s amended invalidity contentions, Paper 10, 15, which is not relevant to any contested issue in this proceeding. Thus, EX2011 lacks relevance and risks confusing the issues.

F. EX2012 – MP4 file of Sanofi’s Patented Pen animation

EX2012 should be excluded under FRE 801-804. EX2012 is offered to show an animated operation of an embodiment of the injection pen described in the ’486 patent. Paper 10, 18. The animation is hearsay because it is offered for the truth of its content without satisfying any of the hearsay exceptions.

G. EX2013 – Mylan claim construction brief (D.N.J., excerpts)

EX2013 should be excluded under FRE 402-402. This exhibit is offered to suggest that the parties agree that the same claim constructions should apply for all patents asserted in the co-pending district court case. Paper 10, 23-24 n.10. The quoted language is taken out of context and does not support this assertion. Thus, EX2013 lacks relevance, risks confusing the issues, is misleading, and is prejudicial to Mylan.

H. EX2014 – District Court construction (Merck litigation)

EX2014 should be excluded under FRE 402-403. EX2014 is offered to show a claim construction (“main housing”) adopted by a district court in a prior litigation not involving Mylan. Paper 10, 25-26. A district court’s construction in an unrelated case is not relevant to any contested issue in this proceeding. Thus, EX2014 lacks relevance, risks confusing the issues, and is prejudicial to Mylan.

I. EX2017, EX2018 — Animation for Møller embodiments

EX2017 and EX2018 should be excluded under FRE 801-804. They are offered to show an animated operation of an embodiment of the injection pen described in Møller. Paper 10, 47, 52, 54. The animation is hearsay because it is offered for the truth of its content without satisfying any hearsay exception.

J. EX2019-EX2023 – Papers, (N.D. W. Va.), (D.N.J.)

EX2019-EX2023 should be excluded under FRE 402-403. These exhibits are offered to show party statements regarding the timeline of collateral litigation. Paper 15, 1-4. These statements are not relevant to the issues in this proceeding. These exhibits lack relevance and risk confusing the issues.

K. EX2023-EX2025 –Transcript Excerpts, (N.D. W. Va.), (D.N.J.)

EX2023-EX25 should be excluded under FRE 402-403. These exhibits are offered to show comments of district court judges and a magistrate judge, respectively, in collateral litigation. Paper 15, 2-3. These comments are not relevant to any contested issues in this proceeding. Thus, these exhibits lack relevance and risk confusing the issues.

L. EX2026 –Local Patent Rules, Explanatory Notes

EX2026 should be excluded under FRE 402-403. EX2026 is offered to establish the patent rules specific to the United States Court for the District of New

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