**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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AMNEAL PHARMACEUTICALS LLC,
AMNEAL PHARMACEUTICALS OF NEW YORK, LLC, and MYLAN PHARMACEUTICALS INC.,
Petitioners

v.

ALMIRALL, LLC,
Patent Owner

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Case IPR2019-00207[1]
Patent 9,517,219

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# PATENT OWNER'S OPPOSITION TO PETITIONERS' MOTION TO EXCLUDE EVIDENCE

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[1] Cases IPR2019-00207 and IPR2019-01095 have been joined in this proceeding.

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**INTRODUCTION**

The Board should deny Petitioners' motion to exclude what is effectively *any* evidence (except its own) referencing or concerning the Warner Declaration, including the Warner Declaration itself. To exclude expert testimony because of its reliance on the Warner Declaration would violate not just the letter of, but universal practice under, the Federal Rules of Evidence. The Warner Declaration is not hearsay, as Petitioners argue, but even if it is so considered, it remains admissible into the record on this proceeding under several exceptions. Indeed, Petitioners' request is so misguided that it invites legal error. To exclude as hearsay any part of the public file history, including any § 1.132 declaration therein, on review by the *same* agency of the very patent that concluded that file history would be arbitrary and capricious. Patent Owner does not cavalierly so suggest as a mere matter of attorney rhetoric—rather, it is with all respect for this Board that Patent Owners submits this would be the result, if not as a general rule, at least on the facts and circumstances and surrounding this proceeding in this posture on the eve of trial.

To exclude a § 1.132 declaration from post-grant proceedings under the AIA—or, as Petitioners soften it, to give it "little or no weight"—under the present circumstances would have arbitrary and thus unjust consequences for disparately-situated patent owners as regards their property rights. The logical extension of

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