

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.

Petitioner,

v.

MERCK SHARP & DOHME CORP.

Patent Owner.

U.S. Patent No. 7,326,708 to Cypes et al.

Issue Date: February 5, 2008

Title: Phosphoric acid salt of a dipeptidyl peptidase-IV inhibitor

Inter Partes Review No.: IPR2020-00040

PETITIONER'S OBJECTIONS TO EVIDENCE

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Patent Trial and Appeal Board

U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 42.64(b)(1), Mylan Pharmaceuticals Inc. (“Mylan” or “Petitioner”) timely objects under the Federal Rules of Evidence (“FRE”) to the admissibility of the following exhibits served by Merck, Sharpe & Dohme Corp. (“Merck” or “Patent Owner”) with its Patent Owner Complete Response.

Petitioner’s objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed and served within five business days. Petitioner files these objections to provide notice to Patent Owner that Petitioner may move to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c), unless timely cured by Patent Owner.

Exhibit Number	FRE Rule
EX2106	EX2106 is inadmissible under FRE 401 and 403 because the purported date of the document is after the filing date of the '708 patent. Therefore, EX2106 is inadmissible as being irrelevant. Petitioner further objects to EX2106 as inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2107	EX2107 is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2108	EX2108 is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or

	providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2110	EX2110 is inadmissible under FRE 801, 802, and 805 because Patent Owner relies on the exhibit for the truth of the matter asserted (POR at 26); FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2111	EX2111 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2114	EX2114 is inadmissible under FRE 401 and 403 because the purported date of the document is after the filing date of the '708 patent. Therefore, EX2114 is inadmissible as being irrelevant.
EX2119	EX2119 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2120	EX2120 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2121	EX2121 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2122	EX2122 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.

EX2123	EX2123 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2125	EX2125 is inadmissible is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2126	EX2126 is inadmissible is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2128	EX2128 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2129	EX2129 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2130	EX2130 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2131	EX2131 is inadmissible under FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.

EX2132	EX2132 is inadmissible under FRE 801, 802, and 805 because Patent Owner relies on the exhibit for the truth of the matter asserted (POR at 24); FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2133	EX2133 is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; FRE 106 as not a complete copy.
EX2134	EX2134 is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; FRE 106 as not a complete copy.
EX2135	EX2135 is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2136	EX2136 is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.
EX2137	EX2137 is inadmissible under FRE 801, 802, and 805 because the exhibit is relied upon for the truth of the matter asserted; FRE 901 for lack of authentication and lack of foundation because there is no evidence authenticating or providing foundation for the document; § 42.65 as expert testimony that does not disclose the underlying facts; FRE 106 as not a complete copy.

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