

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROLLENIUM US INC.,
Petitioner,

v.

ALLERGAN INDUSTRIE, SAS,
Patent Owner.

IPR2019-01505, Patent 8,450,475 B2
IPR2019-01506, Patent 8,357,795 B2
IPR2019-01508, Patent 9,238,013 B2
IPR2019-01509, Patent 9,358,322 B2
IPR2019-01617, Patent 8,822,676 B2
IPR2019-01632, Patent 8,357,795 B2
IPR2020-00084, Patent 9,089,519 B2

**PATENT OWNER'S OBJECTIONS UNDER 37 C.F.R. § 42.64(b)(1)
TO PETITIONER'S EVIDENCE¹**

¹ Authorization for the use of a joint caption page was received on April 27, 2020. Neither party opposes the use of a joint caption page. An identical paper has been filed in each case recited in the consolidated caption.

IPR2019-01505, Patent 8,450,475 B2; IPR2019-01506, Patent 8,357,795 B2; IPR2019-01508, Patent 9,238,013 B2; IPR2019-01509, Patent 9,358,322 B2; IPR2019-01617, Patent 8,822,676 B2; IPR2019-01632, Patent 8,357,795 B2; IPR2020-00084, Patent 9,089,519 B2

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Allergan Industrie, SAS (“Patent Owner”) hereby submits these objections to Petitioner’s Declarations of Dr. Dale DeVore, numbered Exhibit 1002 in each of the above-captioned IPR proceedings.

I. Exhibit 1002 Should Be Excluded Under Fed. R. Evid. 702

Exhibit 1002 is improper expert testimony under Fed. R. Evid. 702 and should be excluded because Dr. DeVore is not a qualified expert under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). Dr. DeVore’s cross-examination testimony revealed that he is not qualified in the pertinent art (*see, e.g.*, IPR2019-01505, Exhibit 1002, ¶¶ 69-72), does not have a B.S., M.S., and Ph.D. in Biochemistry, did not base his testimony on sufficient facts and data, and his testimony is not the product of reliable principles and methods, all bases on which Exhibit 1002 should be excluded. Fed. R. Evid. 702(a), (b) and (c).

II. Exhibit 1002 Should Be Excluded For Violating 37 C.F.R. § 42.11

Exhibit 1002 should be excluded for the additional reason that its signatory, Dr. DeVore, misrepresented his credentials to the Board. *See* 37 C.F.R. § 42.11(b), (c). Dr. DeVore admitted during cross-examination that his Ph.D., M.S., and B.S. are in Food Science & Technology despite representing to the Board that his degrees were in Biochemistry.

IPR2019-01505, Patent 8,450,475 B2; IPR2019-01506, Patent 8,357,795 B2;
IPR2019-01508, Patent 9,238,013 B2; IPR2019-01509, Patent 9,358,322 B2;
IPR2019-01617, Patent 8,822,676 B2; IPR2019-01632, Patent 8,357,795 B2;
IPR2020-00084, Patent 9,089,519 B2

III. Patent Owner Objections to Exhibit 1002 Are Timely

The objections made herein are based on testimony offered by Dr. DeVore at his recently concluded deposition. Dr. DeVore was deposed on August 12-14, 2020. Patent Owner is filing these objections within five business days of the date on which Patent Owner was made aware of the relevant facts, which were discovered through cross-examining Dr. DeVore at his deposition. *See* 37 C.F.R. 42.64(b)(1).

Respectfully Submitted,

Dated: August 19, 2020

/Anthony M. Insogna/

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Attorney for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served on the counsel for Petitioner a true and correct copy of Patent Owner's Objections to Petitioner's Evidence by electronic means at the following address of record:

mcc.prolenium.ipr@mcciplaw.com

Dated: August 19, 2020

/Anthony M. Insogna/

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