

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)

PETITIONER'S OBJECTIONS
UNDER 37 C.F.R. § 42.64(B)(1) TO PATENT OWNER'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, IPR2019-01506, IPR2019-01508, IPR2019-01509,
IPR2019-01617, IPR2019-01632, IPR2020-00084

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Prolenium US Inc., (“Petitioner”) submits these objections to Patent Owner’s evidence served with its Patent Owner Response on September 1, 2020, in each of the above-captioned IPR proceedings:

Exhibits 2083 and 2084 should be excluded under Fed. R. Evid. 802 and 402. These exhibits purport to be “Testing Report[s]” that were (1) produced by individuals who are not testifying in these proceedings, (2) on behalf of an entity that is not a party to the proceeding, (3) about patents not at issue in this proceeding, and (4) produced years after the priority date of the claims. Both the Patent Owner and its declarant Dr. Berkland rely on statements about testing supposedly performed by the individuals identified within the documents, as well as those individuals’ conclusions about the testing, contained within the documents, for their truth. See, e.g., IPR2019-01505, PO Response, 34-35; EX2013 ¶ 182. Thus the statements are double hearsay and should be excluded. Additionally, Exhibits 2083 and 2084 are not relevant to issues in this proceeding because they are purported testing results by a non-party for patents, claims, and compositions not at issue here and are, on their face, dated between 20 and 69 months after the asserted priority date of the patents.

Exhibits 2055, 2059, 2060, 2061, 2128, and 2148 should be excluded under Fed. R. Evid. 402 because they are documents published many years after the

IPR2019-01505, IPR2019-01506, IPR2019-01508, IPR2019-01509,
IPR2019-01617, IPR2019-01632, IPR2020-00084

August 2008 claimed priority date (published in the years 2015, 2016, 2018, 2011, 2016, and 2019 respectively). Thus, they do not reflect the knowledge and level of skill of a person of ordinary skill in the art at or around the time of the alleged invention, so they are irrelevant.

Respectfully submitted,
/Warren Thomas/
Warren J. Thomas (Reg. No. 70,581)

IPR2019-01505, IPR2019-01506, IPR2019-01508, IPR2019-01509,
IPR2019-01617, IPR2019-01632, IPR2020-00084

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4) and consent of the Patent Owner, I certify that on September 9, 2020, a copy of Petitioner's Objections Under 37 C.F.R. § 42.64(b)(1) to Patent Owner's Evidence was served on the counsel of record by email to:

aminsogna@jonesday.com
tweisser@jonesday.com
cplatt@jonesday.com
sgeers@jonesday.com
jhartjes@jonesday.com
ProlleniumIPRs@jonesday.com

/Warren Thomas/
Warren J. Thomas (Reg. No. 70,581)