

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 AMENDED OBJECTIONS UNDER 37 C.F.R.
§ 42.64(b)(1)
TO PETITIONER'S EVIDENCE ¹**

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 evidence served with its Reply to Patent Owner’s Response on November 4, 2020 in each of the above-captioned IPR proceedings. This notice is being timely filed within 5 business days (excluding weekends and federal holidays) of Petitioner’s Service of its Reply.

I. Exhibits 1077, 1086 (“Maleki”)², 1102, 1103, 1116, 1117, 1202

Patent Owner objects to the admissibility of Exhibits 1077³, 1086 (“Maleki”), 1102, 1103, 1116, 1117 and 1202 under Fed. R. Evid. 402 and 403 as lacking relevance to the issues before the Board and/or because each exhibit’s probative value is outweighed by a danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. These exhibits do not reflect the knowledge and level of skill of a person of

² Petitioner has identified two different documents as Exhibit 1086. The first exhibit is “Transcript of January 10, 2020, Conference Call with Board.” The second exhibit is “Atoosa Maleki et al., Effect of pH on the Behavior of Hyaluronic Acid in Dilute and Semidilute Aqueous Solutions, Macromolecular Symposia, Vol. 274, 131-140 (Dec. 29, 2008).” This objection refers to the Maleki reference.

³ Patent Owner files its objections to Exhibit 1077 for all above-captioned IPR proceedings with the exception of IPR2020-00084.

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

ordinary skill in the art at or around the time of the alleged invention and are not relevant.

II. Exhibit 1104

Patent Owner objects to the admissibility of Exhibit 1104 under Fed. R. Evid. 801-805 (hearsay and hearsay within hearsay) to the extent the declarants' statements are offered for the truth of the matter asserted and do not fall within a recognized exception under Fed. R. Evid. 803.

Patent Owner further objects to the admissibility of Exhibit 1104 under Fed. R. Evid. 106, Fed. R. Evid. 402/403 and under 37 C.F.R. § 42.63(b) as lacking relevance and/or prejudicial and confusing because the document was not available to public at the time of the priority date, is an incomplete document, and because no translation has been provided for the foreign language text.

III. Exhibits 1085 (“EPO Response”)⁴, 1108, and 1109

Patent Owner objects to the admissibility of Exhibits 1085, 1108, and 1109 under Fed. R. Evid. 801-805 (hearsay and hearsay within hearsay) to the extent the

⁴ Petitioner has identified two exhibits as Exhibit 1085. The first is “Renewed Declaration of John W. Harbin In Support of Motion for Admission Pro Hac Vice (Jan. 21, 2020).” The second is Allergan Industrie, SAS’s September 12, 2019 Response to European Patent Office Opposition Division Preliminary Opinion in proceeding against European Patent 2 323 617 B1, available at

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

declarants' statements are offered for the truth of the matter asserted and do not fall within a recognized exception under Fed. R. Evid. 803.

To the extent Petitioner maintains its objections over Exhibits 2083 and 2084, Patent Owner further objects to the admissibility of Exhibits 1085, 1108, and 1109 under Fed. R. Evid. 402 and 403 as lacking relevance to the issues before the Board and/or because each exhibit's probative value is outweighed by a danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence as Exhibits 1085, 1108, and 1109 are about patents not at issue in this proceeding and 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 and are not relevant.

IV. Exhibits 1083, 1088, 1107, 1111, 1114, 1115, 1116, 1117,

Patent Owner objects to Exhibits 1083⁵, 1088, 1107, 1111, 1114, 1115, 1116, and 1117 under 37 C.F.R. § 42.6(a)(3) (improper incorporation by reference). These exhibits are not cited to or discussed anywhere in the

<https://register.epo.org/application?number=EP09785852&lng=en&tab=doclist>.” This objection refers to the EPO response.

⁵ Patent Owner files its objections to Exhibit 1083 for all above-captioned IPR proceedings with the exception of IPR2020-00084.

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 Reply. Instead, these exhibits are cited in a declaration submitted in support of the Petitioner's Reply. Accordingly, these Exhibits are improperly incorporated by reference.

V. Exhibits 1076, 1081, 1085 (“EPO Response”), 1086 (“Maleki”), 1087, 1089, 1090, 1202

Patent Owner objects to Exhibits 1076, 1081, 1087, and 1202 under Fed. R. Evid. 402 and 403 as lacking relevance to the issues before the Board and/or because each exhibit's probative value is outweighed by a danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. Although these exhibits were identified as “filed” in at least one of Petitioner's Exhibit Lists for the above-captioned IPRs, these exhibits are not cited to or discussed anywhere in the reply or in any declaration submitted in support of Petitioner's Reply.

Petitioner further objects to Exhibits 1085 (“EPO Response”), 1086 (“Maleki”), 1089, and 1090 under Fed. R. Evid. 402 and 403 as lacking relevance to the issues before the Board and/or because each exhibit's probative value is outweighed by a danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. Although identified in at least one of Petitioner's Exhibit Lists for the above-captioned IPRs, the

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