

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)
IPR2019-01506 (Patent 8,357,795)
IPR2019-01508 (Patent 9,238,013)
IPR2019-01509 (Patent 9,358,322)
IPR2019-01617 (Patent 8,822,676)
IPR2019-01632 (Patent 8,357,795)
IPR2020-00084 (Patent 9,089,519)

Petitioner's Opposition to Patent Owner's Motion to Exclude¹

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.

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TABLE OF ABBREVIATIONS

Abbreviation	Term
BDDE	butanediol diglycidyl ether
DEO	1,2,7,8-diepoxyoctane
Challenged Patents	U.S. Patent Nos. 8,450,475; 8,357,795; 9,238,013; 9,358,322; 8,822,676; and 9,089,519, collectively
FDA	U.S. Food & Drug Administration
FRE	Federal Rule(s) of Evidence
HA	hyaluronic acid
POSITA	Person of Ordinary Skill in the Art
ID Paper	IPR2019-01617, Patent Owner's Identification of [Alleged] Improper New Arguments and Evidence, Paper 50 (identical paper filed in all proceedings)
ID Resp.	IPR2019-01617, Petitioner's Response to Patent Owner's Identification of Alleged Improper New Arguments and Evidence, Paper 51 (identical paper filed in all proceedings)
MTE	Patent Owner's Motion to Exclude, IPR2019-01617, Paper 55 (identical paper filed in all proceedings)
Pet.	Petition
PO Resp.	Patent Owner's Response to the Petition in IPR2019-01617, Paper 40 (cited as representative and exemplary of citations for the remaining proceedings)
Reply	Petitioner's Reply to Patent Owner Response in IPR2019-01617, Paper 43 (cited as representative and exemplary of citations for the remaining proceedings)
Sur-Reply	Patent Owner's Sur-Reply in IPR2019-01617, Paper 53 (cited as representative and exemplary of citations for the remaining proceedings)

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

Abbreviation	Term
Sur-Replies [plural]	IPR2019-01505, Patent Owner's Sur-Reply, Paper 52; IPR2019-01506, Patent Owner's Sur-Reply, Paper 54; IPR2019-01508, Patent Owner's Sur-Reply, Paper 55; IPR2019-01509, Patent Owner's Sur-Reply, Paper 53; IPR2019-01617, Patent Owner's Sur-Reply, Paper 53; IPR2019-01632, Patent Owner's Sur-Reply, Paper 54; and IPR2020-00084, Patent Owner's Sur-Reply, Paper 48, collectively

All emphasis in this Petitioner's Opposition to Patent Owner's Motion to Exclude is added unless otherwise indicated.

I. INTRODUCTION

Allergan’s Motion to Exclude (MTE) is mostly an improper attempt to argue (1) the merits of the evidence and (2) that the Prollenium’s Replies exceed the proper scope of a reply. Allergan’s FRE 702 “unreliable” arguments just recycle arguments from its Responses and Sur-Replies about the *weight* of the experts’ testimony. And under the guise of citing FRE 403 “unfair prejudice,” Allergan argues the motion *to strike* it was denied leave to file. Allergan’s MTE is one of many ways it is seeking to distract the Board from the merits. The Board should reject Allergan’s attempts to abuse the motion to exclude process. The few actual evidentiary objections lack merit as well.

II. Argument

A. A Motion to Exclude is for admissibility, not Allergan’s other purposes

A motion to exclude addresses *admissibility* of evidence, not the weight or sufficiency of that evidence. PTAB CONSOLIDATED TRIAL PRACTICE GUIDE 79 (Nov. 2019); *see also Daiichi Sankyo Co. v. Alethia Biotherapeutics, Inc.*, No. IPR2015-00291, Paper 75, 24 (June 14, 2016) (Snedden, J.) (denying motion to exclude declaration testimony); *InnoPharma Licensing, Inc. v. Senju Pharm. Co.*, No. IPR2015-00903, Paper 82, 33 (July 28, 2016) (Obermann, J.) (denying motion to exclude under FRE 702). A motion to exclude also should not “address arguments or evidence that a party believes exceeds the proper scope of reply.”

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