Filed: March 12, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN INSTITUTIONAL LLC and PFIZER INC.,

Petitioners,

v.

NOVO NORDISK A/S,

Patent Owner.

Case No. IPR2020-00324[1]
U.S. Patent No. 8,114,833

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE

[1] IPR2020-01252 has been joined with this proceeding.

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Pursuant to 37 C.F.R. § 42.23, Petitioner opposes Patent Owner Novo Nordisk A/S's ("Novo") Motion to Exclude (Paper 52). The Board should deny Novo's motion in its entirety for lacking any merit.

A motion to exclude "is neither a substantive sur-reply, nor a proper vehicle for arguing whether a reply or supporting evidence is of appropriate scope." *Kyocera Corp. v. Softview LLC*, IPR2013-00007, Paper 51, 34 (PTAB Mar. 27, 2014). But Novo's motion presents nothing more. Petitioner's Reply evidence is appropriate because it fairly and directly responds to arguments and evidence first raised in Novo's Response. As the Federal Circuit recognized, a petitioner may introduce new evidence after the petition stage if the evidence is in reply to evidence introduced by the patent owner, or if it is used to document the knowledge that POSAs bring to bear in reading the relied-upon prior art. *Anacor Pharm., Inc. v. Iancu*, 889 F.3d 1372, 1380-81 (Fed. Cir. 2018). Novo misconstrues the rules; contrary to its arguments, "[n]ew evidence, including new testimonial evidence, filed in support of a reply, is not *per se* improper," as "[a] Petitioner's Reply…may only respond to arguments raised in Patent Owner's Response." *Hospira, Inc. v. Genentech, Inc.*, IPR2017-00804, 2018 WL 1869685, at *1 (PTAB Apr. 18, 2018). The challenged evidence meets this standard.

Novo moves to exclude Dr. Forrest's Reply Declaration ("the Forrest Reply Declaration" (Ex. 1106)) in its entirety and Exhibits 1091-1098, 1103, and 1114-

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