

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS INC., CELLTRION, INC., and  
APOTEX, INC.,  
Petitioners,

v.

REGENERON PHARMACEUTICALS, INC.,  
Patent Owner.

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*Inter Partes* Review No.: IPR2021-00880<sup>1</sup>

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U.S. Patent No. 9,669,069 B2  
Filed: December 17, 2015  
Issued: June 6, 2017  
Inventor: George D. Yancopoulos

Title: USE OF A VEGF ANTAGONIST TO TREAT  
ANGIOGENIC EYE DISORDERS

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**PETITIONER'S MOTION TO EXCLUDE EVIDENCE**  
37 C.F.R. § 42.64(c)

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<sup>1</sup> IPR2022-00257 and IPR2022-00301 have been joined with this proceeding.

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## **I. Introduction.**

Mylan Pharmaceuticals Inc. (“Petitioner”) submits this motion pursuant to 37 C.F.R. §§ 42.62 and 42.64(c). Petitioner requests exclusion of the entirety of Patent Owner (“PO”) Exhibits 2059-60, 2073, 2096, 2128, and the below-identified portions of Exhibits 2048-50 (collectively, the “Challenged Exhibits”). Petitioner timely objected to these exhibits through written objections (Paper 40) and/or during deposition.

In IPRs, documents are admitted into evidence subject to an opposing party asserting objections to the evidence and moving to exclude the evidence. 37 C.F.R. § 42.64; *Actifio, Inc. v. Delphix Corp.*, IPR2015-00050, Paper 57, 5 (P.T.A.B. Mar. 31, 2016). The Federal Rules of Evidence (FRE) govern the admissibility of evidence in IPR proceedings. 37 C.F.R. § 42.62; *LKQ Corp. v. Clearlamp, LLC*, IPR2013-00020, Paper 17, 3 (P.T.A.B. Mar. 5, 2013). The party moving to exclude evidence bears the burden of proof to establish that it is entitled to the relief requested—namely, that the material to be excluded is inadmissible under the FRE. *See Microsoft Corp. v. FG SRC LLC*, IPR2018-0605, Paper 72, 11 (P.T.A.B. Apr. 9, 2020). As shown herein, the Challenged Exhibits should be excluded as not being relevant to any issue on which trial has been instituted, lacking authentication, containing hearsay, and/or causing undue prejudice.

The Board should not dismiss this Motion as moot even if the Board does not

rely on the inadmissible evidence in reaching its Final Written Decision. Instead, Petitioner respectfully requests that the Board grant the motion so that PO cannot continue to rely upon the exhibits and paragraphs identified herein on appeal. Not excluding the exhibits would force Petitioner to address them again, *e.g.*, on appeal, thereby wasting judicial and party resources. To the extent that any exhibit or portion of an exhibit is not excluded, use of the exhibit should be restricted to the use for which it was originally submitted. FRE 105.

## **II. Exhibits Referenced in the Weber Declaration (Ex.2131).**

In response to Petitioner's objections (Paper 40), PO served the declaration of Doris Weber (Ex.2131), PO's in-house, senior litigation support specialist, attempting to cure the authentication deficiencies with Exhibits 2059-60, 2073, and 2128. Ms. Weber offers the following exhibits are "true and correct" copies of what each purports to be: Exhibits 2059-60, 2073, and 2128.

Yet, Ms. Weber is not a custodian of these exhibits, and has no personal knowledge of the creation, authorship, maintenance, or modification of any of the exhibits or the underlying documents from which they were prepared. Thus, Ms. Weber's declaration does not (and cannot) "satisfy the requirement of authenticating or identifying an item of evidence." FRE 901(a); *id.* ("[T]he proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."); *see also Riverbed Tech., Inc v. Reatime Data LLC*, IPR2016-00978, Paper 67,

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