

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

REGENERON PHARMACEUTICALS, INC.,
Patent Owner

Case IPR2021-00881¹
Patent No. 9,254,338 B2

PATENT OWNER'S MOTION TO EXCLUDE

¹ IPR2022-00258 and IPR2022-00298 have been joined with this proceeding.

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<i>Laboratoire Francais du Fractionnement et des Biotechnologies SA v. Novo Nordisk Healthcare AG</i> , IPR2017-00028, Paper 109 (PTAB Apr. 13, 2022)	3, 4
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<i>United States v. O'Connor</i> , 237 F.2d 466 (2d Cir. 1956)	12

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Statutes

35 U.S.C. § 3115
35 U.S.C. § 3123

Rules & Regulations

Fed. R. Evid. 4016
Fed. R. Evid. 4026
Fed. R. Evid. 4039
Fed. R. Evid. 80110
Fed. R. Evid. 80210
Fed. R. Evid. 80311
Fed. R. Evid. 80411
Fed. R. Evid. 80711
Fed. R. Evid. 100612
37 C.F.R. § 42.231, 4
37 C.F.R. § 42.611
37 C.F.R. § 42.641

Other Authorities

Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019)4

Pursuant to 37 C.F.R. § 42.64, Patent Owner Regeneron Pharmaceuticals, Inc. (“Patent Owner”) hereby moves to exclude (i) Portions of Petitioner Mylan Pharmaceuticals Inc.’s (“Petitioner”) Reply (Paper 61) that untimely present new arguments; (ii) Exhibit Nos. 1118, 1121 and 1124, which are not cited in the pleadings; (iii) portions of Petitioner’s expert declarations not cited in the pleadings; (iv) Exhibits 1154 and 1173, and portions of Petitioner’s Reply and expert declaration discussing those exhibits; and (v) Appendix A to the Albin Reply Declaration (Ex. 1114).² The Exhibits and portions of Petitioner’s Reply and expert declarations that Patent Owner seeks to exclude contravene 37 C.F.R. § 42.23(b), are irrelevant under Federal Rule of Evidence 402, are unfairly prejudicial under Federal Rule of Evidence 403, are hearsay under Federal Rule of Evidence 802, and/or constitute improper attorney argument. Pursuant to 37 C.F.R. § 42.64, Patent Owner timely raised its objections to these materials on November 24, 2021, and June 6, 2022 (Paper Nos. 30 and 59), and in its communication with the Board dated June 3, 2022.

² For ease of reference, a table listing specific locations of the Petitioner submissions that are the subject of this motion to exclude is included *infra* at 13.

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