

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 OPPOSITION TO PETITIONER'S
MOTION TO EXCLUDE EVIDENCE**

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

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I. Introduction

Petitioner's motion to exclude evidence mischaracterizes the record, lacks particularity, and falls woefully short of meeting Petitioner's burden. Patent Owner respectfully requests that the Board deny Petitioner's motion.

II. Petitioner's Motion to Exclude Documents Authenticated by Ms. Weber

Petitioner asserts that forty of Patent Owner's Exhibits,² which Petitioner terms the "Weber Exhibits," should be excluded from evidence pursuant to Federal Rule of Evidence 901. Specifically, Petitioner complains that these documents, which were authenticated both through written declaration and at deposition, have still not been addressed to Petitioner's satisfaction. Petitioner's complaints mischaracterize both the facts and the law, and should be rejected.

"Federal Rule of Evidence 901 requires that a proponent need only 'produce evidence sufficient to support a finding that the item is what the proponent claims it is' to meet its burden on authentication. Fed. R. Evid. 901(a)." *Comcast Cable Comms., LLC v. Veveo, Inc.*, IPR2019-002990, 2020 WL 4687062, at *28. (P.T.A.B. Aug. 12, 2020). "Authenticity, therefore, *is not an especially high hurdle* for a party

² Exhibits 2059-2060, 2073, 2128, 2133-40, 2163, 2169-70, 2176, 2197, 2200, 2205, 2208, 2218, 2229, 2272-85, 2243-44, 2250, and 2259. Paper 81 at 2.

to overcome.” *Id.* (emphasis added).

Each of the Weber Exhibits was authenticated by Doris Weber, a Senior Litigation Support Specialist with Patent Owner Regeneron Pharmaceuticals, Inc. Ex.2286 at ¶1. Ms. Weber explained in her sworn declaration that she has personal knowledge of the facts recited therein, and that each of the Weber Exhibits is a true and correct copy of what it purports to be. *See generally id.* Thereafter, at Petitioner’s request, Ms. Weber appeared for deposition, where she testified as to the processes whereby she confirmed the authenticity of the Exhibits. By way of example, Ms. Weber explained that she personally collected the documents addressed in her declaration from Regeneron storage, reviewed them, and confirmed that they are true and correct copies kept in accordance with Regeneron’s procedures. *See, e.g.,* Ex.1150 at 25:16-26:18, 29:23-30:23, 34:10-14, 41:7-13, 42:13-43:24.³ Where possible, Ms. Weber also personally confirmed these details with individual custodians. *See, e.g., id.* at 35:23-37:2; 40:6-24, 44:3-45:6 (Ms. Weber testified that she spoke with custodians to confirm document storage locations). Ms. Weber’s declaration and deposition testimony satisfies the threshold

³ These citations are just a subset of Ms. Weber’s testimony on the forty Weber Exhibits that are the subject of Petitioner’s motion. Patent Owner can readily provide similar citations for each of the Weber Exhibits if it is helpful to the Board.

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