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.

Inter Partes Review No.: IPR2021-00881[1]

U.S. Patent No. 9,254,338 B2
Filed: July 12, 2013
Issued: February 9, 2016
Inventor: George D. Yancopoulos

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

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

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

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Cases

Regulations

I. Introduction.

Patent Owner ("PO") has moved for the "extraordinary relief" that the Board exclude Petitioner's Reply arguments and evidence. (*See* Paper 83). But, PO has not carried its burden to establish that any portion of Petitioner's Reply, nor any of its evidence, should be excluded. Denial of PO's Motion is warranted for the following reasons.

II. Legal Standard.

Exclusion "is an exceptional remedy that the Board expects will be granted rarely." (Consolidated Trial Practice Guide Update (Nov. 2019) ("TPG"), 80). The party moving to exclude evidence bears the burden of proof to establish that it is entitled to the relief requested—namely, that the objected-to material is inadmissible under the Federal Rules of Evidence. 37 C.F.R. §§ 42.20(c), 42.62(a). The Board has emphasized that "[t]here is a strong public policy for making all information filed in a non-jury, quasi-judicial administrative proceeding available to the public, especially in an [IPR] which determines the patentability of claim[s] in an issued patent." *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, CBM2012-00002, Paper 66, 60 (P.T.A.B. Jan. 23, 2014).

III. PO's Motion Is Procedurally Deficient.

A. PO Has Not Made Timely Objections to Evidence.

PO's Motion does not comply with the procedural requirements of 37 C.F.R. § 42.64. As a threshold matter, PO seeks exclusion of Petitioner's Reply, (*see* Mot.,

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