

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
MSN LABORATORIES PRIVATE LTD.,
and MSN PHARMACEUTICALS INC.,

Petitioner,

v.

BAUSCH HEALTH IRELAND LIMITED,

Patent Owner.

Case IPR2022-00722¹
U.S. Patent No. 7,041,786

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

¹ IPR2023-00016 has been joined with this proceeding.

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Patent Owner respectfully submits this Opposition to Petitioner Mylan Pharmaceuticals Inc.'s Motion to Exclude (Paper 54, "Mot."). Petitioner's Motion improperly argues the weight of the evidence, rather than its admissibility, and is further deficient because Petitioner mischaracterizes the relevance of the challenged Exhibits and manufactures reliability concerns where none exist. Because Petitioner has not met its burden to establish that Exhibits 2024, 2025, 2027, 2028, and 2040 are inadmissible, it cannot contravene the strong public policy favoring admission of reliable evidence. 37 C.F.R. § 42.20(c); *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, CBM2012-00002, Paper 66 at 60-61 (PTAB Jan. 23, 2014).

I. Exhibits 2024 and 2025 (Davies and Waldman Declarations) Are Admissible

Petitioner states that it timely objected to Exhibits 2024 and 2025 under FRE 402, 403, 603, 702, 802, and 901. Mot., 1 (citing Paper 30, 1-2). But in its Motion, Petitioner baldly asserts that Exhibits 2024 and 2025 should be excluded because Dr. Davies' and Waldman's testimony is not reliable. Rather than assert a cognizable evidentiary ground, Petitioner improperly uses its Motion to respond to Patent Owner's Sur-Reply. Petitioner contravenes the Board's unambiguous rules: "A motion to exclude is not a vehicle for addressing the weight to be given evidence—arguments regarding weight should appear only in the merits documents." Consolidated Trial Practice Guide, November 2019 ("TPG") at 79; 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012); *eBay Inc. v. MoneyCat Ltd.*, CBM2014-00092,

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