

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

BAUSCH HEALTH IRELAND LIMITED,
Patent Owner.

Case IPR2022-00722¹
Patent 7,041,786

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

¹ IPR2023-00016 has been joined with this proceeding.

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I. INTRODUCTION

The Board should deny Bausch's motion (Paper 53, MtE) to exclude EX1067, which provides relevant excerpts from the patent prosecution history of the European analogue to the involved patent, and portions of the Second Peterson Declaration (EX1063) that discuss EX1067. The prosecution history is a public record from the European Patent Office, an organ of the European Patent Organization, a public international organization of nearly 40 member states.² Bausch seeks to exclude EX1067 *in its entirety* as hearsay under Federal Rule of Evidence (FRE) 802. MtE 1. Bausch argues specific paragraphs of EX1063 discussing EX1067 are irrelevant, prejudicial, confusing, a waste of time, and hearsay. MtE 6-7. None of Bausch's arguments justify its requested relief.

II. REASONS FOR DENIAL

A. EX1067 (EPO Prosecution History) is Admissible

1. EX1067 is an admissible record of a public office

Exceptions to the rule against admitting hearsay include any record of a public office that (i) sets out the office's activities; (ii) sets out matters observed while under a legal duty to report; *or* (iii) sets out factual findings from a legally

² <https://www.epo.org/about-us/foundation/member-states.html>.

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