Filed on behalf of: Corcept Therapeutics, Inc.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TEVA PHARMACEUTICALS USA, INC.,
*Petitioner*

v.

CORCEPT THERAPEUTICS, INC.,
*Patent Owner*

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Case PGR2019-00048
U.S. Patent No. 10,195,214

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# REPLY IN FURTHER SUPPORT OF PATENT OWNER'S MOTION TO EXCLUDE

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## Cases



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## Other

## I. Teva's Procedural Arguments Lack Merit

Teva preliminarily asserts that Corcept's motion should be denied on two procedural grounds. *First*, Teva contends that "Corcept's motion does not contest the *admissibility* of the thesis … and should be denied for that reason alone." Paper 45 at 1. This is demonstrably false. The Motion to Exclude contests the admissibility of the thesis in no uncertain terms. *See* Paper 44 at 1 ("Exhibit 1075 should be excluded pursuant to FRE 901"); *see also id.* at 5.

*Second*, Teva contends that "arguments as to the public accessibility of [Ex. 1075] should have been presented in [the] Patent Owner Sur-Reply." Paper 45 at 3. Not so. The Board has considered public accessibility under FRE 901 where, as here, "authentication and hearsay issues as they relate to the printed date information on [the alleged prior art] are … intertwined with admissibility." *Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR2016-00130, Paper 35 at 17 (P.T.A.B. May 8, 2017). The *Chicago Mercantile* case that Teva cites stands for the same proposition—there, the Board explained that "addressing the admissibility of evidence, e.g., authenticity or hearsay, underlying the factual determinations of whether [the reference] is a prior art printed publication may be the subject of a motion to exclude." CBM2014-00114, Paper 35 at 52.

These are the same grounds on which Corcept moved to exclude Ex. 1075. Corcept expressly argued that Teva "put forth insufficient evidence indicating that

Exhibit 1075 was cataloged in any library," because the only "evidence" Teva offered in support of its alleged availability is an email chain that the Board should refuse to consider on hearsay grounds. Paper 44 at 3-4. In other words, Corcept's motion properly addresses the admissibility of the evidence "underlying the factual determinations of whether [Ex. 1075] is a prior art printed publication." *Chicago Mercantile*, CBM2014-00114, Paper 35 at 52. Accordingly, Corcept's motion is procedurally proper under the Board's precedent.

Moreover, Teva and its lead counsel agreed with and embraced this approach less than one year ago in moving to exclude a thesis "under FRE 901 because [its proponent] … ha[d] not provided sufficient information regarding its authenticity as a publicly accessible document." Motion to Exclude, *Eli Lilly & Co. v. Teva Pharm. Int'l.*, IPR2018-01710, Paper 51 at 2 (P.T.A.B. Dec. 11, 2019). Teva and its counsel advocated to the Board that "[t]he ***public accessibility*** of [a thesis] is ***an essential part of the foundation analysis***." *Id.* (emphasis added).

Thus, Teva's opposition on procedural grounds should be rejected.

## II. Teva's Arguments on the Merits Are Baseless

Teva's response on the merits fares no better. Teva argues that Ex. 1075 was publicly available because "the thesis has been indexed in the Central Catalogue of Dutch libraries for the past 28 years *and* has been available online since 2013." Paper 45 at 4. The only "evidence" that Teva cites in support of its

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