

On Behalf Of:

Novartis AG and LTS Lohmann Therapie-Systeme AG

By:

Raymond R. Mandra
ExelonPatchIPR@fchs.com
(212) 218-2100

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**NOVEN PHARMACEUTICALS INC.
AND MYLAN PHARMACEUTICALS INC.,**
Petitioners

v.

NOVARTIS AG AND LTS LOHMANN THERAPIE-SYSTEME AG,
Patent Owners

Inter Partes Review No. 2014-00550¹

U.S. Patent 6,335,031

**PATENT OWNERS' OPPOSITION TO
PETITIONERS' MOTION TO EXCLUDE**

¹ Case IPR2015-00268 has been joined with this proceeding.

TABLE OF CONTENTS

	<u>Pages</u>
I. Exhibit 2059 Is Admissible As An Authenticated Business Record	1
II. There Is No Basis To Exclude Dr. Schöneich’s Cross-Examination Testimony Related To Ex. 2059	7
III. Petitioners Have Waived Their Objections To Exhibits 2015 And 2032	8
IV. Exhibits 2053 And 2061 Have Circumstantial Guarantees Of Trustworthiness And Thus Are Admissible Under F.R.E. 807	9
V. No Part Of Ex. 2012 Or Ex. 1049 Should Be Excluded Because The Experts Are Permitted To Rely On Exhibits 2015, 2032, 2053, And 2061	12
VI. No Part Of Exhibit 2012 Should Be Excluded Because Dr. Klibanov Was Allowed To Rely On The ’031 Patent For Non-Hearsay Purposes.....	14
VII. Conclusion.....	15

TABLE OF AUTHORITIES

Cases

<i>200 Kelsey Assocs., LLC v. Delan Enters. Inc.</i> , No. 92044571, 2008 WL 2515089 (T.T.A.B. June 11, 2008)	4
<i>Alpert v. Slatin</i> , 305 F.2d 891 (C.C.P.A. 1962).....	5
<i>Astra Aktiebolag v. Andrx Pharms., Inc.</i> , 222 F. Supp. 2d 423 (S.D.N.Y. 2002)	6
<i>CaptionCall, L.L.C. v. UltraTec, Inc.</i> , IPR2013-00544, Paper 74 (P.T.A.B. Mar. 3, 2015).....	10, 11
<i>Corning Inc. v. DSM IP Assets B.V.</i> , IPR2013-00043, Paper 97 (P.T.A.B. May 1, 2014).....	4, 5
<i>Corning Inc. v. DSM IP Assets B.V.</i> , IPR2013-00049, Paper 88 (P.T.A.B. May 9, 2014).....	8
<i>Hal Roach Studios, Inc. v. Richard Feiner & Co.</i> , 896 F.2d 1542 (9th Cir. 1990).....	4
<i>Halbert v. Schuurs</i> , 1983 WL 51885 (B.P.A.I. May 23, 1983)	5
<i>Handi Quilter, Inc. v. Bernina Int’l AG</i> , IPR2013-00364, Paper 30 (P.T.A.B. June 12, 2014).....	1
<i>Invitrogen Corp. v. Clontech Labs, Inc.</i> , 429 F.3d 1052 (Fed. Cir. 2005).....	8
<i>Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.</i> , CBM2013-00002, Paper 59 (P.T.A.B. Feb. 24, 2014).....	13, 15
<i>Monsanto Co. v. David</i> , 516 F.3d 1009 (Fed. Cir. 2008).....	13, 15
<i>Munoz v. Strahm Farms, Inc.</i> , 69 F.3d 501 (Fed. Cir. 1995).....	4

<i>Neupak, Inc. v. Ideal Mfg. & Sales Corp.</i> , 41 F. App'x 435 (Fed. Cir. 2002).....	10
<i>Novartis Pharms. Corp. v. Noven Pharms., Inc.</i> , No. 13-cv-00527 (D. Del.).....	7, 9, 12
<i>Novartis Pharms. Corp. v. Watson Labs., Inc.</i> , No. 11-cv-1077-RGA (D. Del.)	10
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (en banc)	14
<i>Rorabaugh v. Cont'l Cas. Co.</i> , 321 F. App'x 708 (9th Cir. 2009).....	9
<i>S.E.C. v. Jasper</i> , 678 F.3d 1116 (9th Cir. 2012).....	4
<i>Teter v. Kearby</i> , 169 F.2d 808 (C.C.P.A. 1948).....	5
<i>U.S. v. Komasa</i> , 767 F.3d 151 (2d Cir. 2014).....	3
<i>U-Haul Int'l, Inc. v. Lumbermens Mut. Cas. Co.</i> , 576 F.3d 1040 (9th Cir. 2009).....	7
<i>Wells v. J. C. Penney Co.</i> , 250 F.2d 221 (9th Cir. 1957).....	9
<i>Wojciak v. Nishiyama</i> , No. 104,539, 2001 WL 1675462 (B.P.A.I. June 4, 2001).....	5

Rules

F.R.E. 106.....	6
F.R.E. 602.....	13, 14
F.R.E. 703.....	13, 14, 15
F.R.E. 803(6)	1, 3, 4, 6, 7
F.R.E. 807.....	9, 10, 11, 14

F.R.E. 901(b)(1)..... 4
F.R.E. 902(11) 1, 2, 3, 4, 6, 7
F.R.E. 1006.....6, 7

Regulations

37 C.F.R § 42.53(a) 11
37 C.F.R. § 42.61(c) 14
37 C.F.R. § 42.64.....1, 6
37 C.F.R. § 42.65..... 6

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.