

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.

Petitioner

v.

UCB PHARMA GMBH

Patent Owner

Patent No. 6,858,650

Case IPR2016-00510

**PETITIONER MYLAN PHARMACEUTICALS INC.'S RESPONSE
TO PATENT OWNER'S OBJECTIONS AND SUPPLEMENTAL
EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(2)**

Petitioner Mylan Pharmaceuticals Inc. (“Mylan”) submits the following in Response to Patent Owner UCB Pharma GmbH (“UCB”) Objections to Admissibility of Evidence served with Mylan’s Petition for *Inter Partes* Review, dated and served on August 3, 2016. Mylan reserves all rights to respond to UCB’s objections to Exhibits that are not specifically referenced below and to respond further to UCB’s objections to Exhibits that are referenced below.

Exhibit 1016	
Objection(s)	Petitioner has failed to establish publication prior to November 16, 1999.
Response	Petitioner does not offer Exhibit 1016 as prior art. Exhibit 1016 is a document that may be used by an expert witness to ascertain and provide testimony about what a person of ordinary skill in the art would have understood prior to the priority date of the patent at issue in these proceedings.
Exhibit 1021	
Objection(s)	Petitioner has failed to establish publication prior to November 16, 1999.
Response	Petitioner does not offer Exhibit 1021 as prior art. Exhibit 1021 is a document that may be used by an expert witness to ascertain and provide testimony about what a person of ordinary skill in the art would have understood prior to the priority date of the patent at issue in these proceedings.
Exhibit 1033	
Objection(s)	FRE 401; FRE 402; FRE 403; Lacking foundation.
Response	Exhibit 1033 is the Declaration of DeForest McDuff, Petitioner’s expert herein. Exhibit 1033 is relevant at least as evidence of commercial success from an economic perspective. Mr. McDuff has a specific expertise that will

	assist in understanding the evidence considered. The facts and documents considered by Mr. McDuff in formulating his opinions are at least the kinds of evidence experts in the field may rely in forming opinions or inferences upon the subjects to which Mr. McDuff refers, and these materials may be referred to by Mr. McDuff in any further testimony as such. <i>See</i> FRE 702, 703. Further, FRE 1006 permits the use of a summary or chart to present voluminous data. The statements in Mr. McDuff's declaration are given under the penalty of perjury.
Exhibit 1034	
Objection(s)	FRE 401; FRE 402; FRE 403; Lacking foundation.
Response	Exhibit 1034 is the CV of DeForest McDuff. Exhibit 1034 is relevant at least as evidence of the qualifications and experience of Mr. McDuff, supporting his expertise qualifying him to provide expert testimony in this matter. <i>See</i> FRE 702. The statements in Exhibit 1034, an exhibit to Mr. McDuff's declaration, are given under penalty of perjury.
Exhibit 1036	
Objection(s)	FRE 401-403, 801-802, 901-902; Containing hearsay; Lacking Foundation; Assuming facts not in evidence. Patent Owner further states: "For example, Petitioner relies on these exhibits to prove the truth of sale values and shares, prescription values and shares, and other information described therein, rendering this information hearsay to the extent Petitioner attempts to rely on them to prove the truth of any matter therein, including any purported secondary considerations. <i>See</i> Fed. R. Evid. 801, 802 (inadmissible hearsay)."
Response	Exhibit 1036 is an compilation of data from standard sales and reporting documents. These documents were considered by Mr. McDuff in formulating his opinions, are at least the kinds of documents upon which an expert may rely, and may be referred to by Mr. McDuff in any further testimony as such. <i>See</i> FRE 702, 703. Further, FRE 1006

	permits the use of a summary or chart to present voluminous data. Exhibit 1036 is referenced as an exhibit to Mr. McDuff's declaration, which is given under the penalty of perjury.
Exhibit 1037	
Objection(s)	FRE 401-403, 801-802, 901-902; Containing hearsay; Lacking Foundation; Assuming facts not in evidence. Patent Owner further states: "For example, Petitioner relies on these exhibits to prove the truth of sale values and shares, prescription values and shares, and other information described therein, rendering this information hearsay to the extent Petitioner attempts to rely on them to prove the truth of any matter therein, including any purported secondary considerations. See Fed. R. Evid. 801, 802 (inadmissible hearsay)."
Response	Exhibit 1037 is an compilation of data from standard sales and reporting documents. These documents were considered by Mr. McDuff in formulating his opinions, are at least the kinds of documents upon which an expert may rely, and may be referred to by Mr. McDuff in any further testimony as such. See FRE 702, 703. Further, FRE 1006 permits the use of a summary or chart to present voluminous data. Exhibit 1037 is referenced as an exhibit to Mr. McDuff's declaration, which is given under the penalty of perjury.
Exhibit 1038	
Objection(s)	FRE 401-403, 801-802, 901-902; Containing hearsay; Lacking Foundation; Assuming facts not in evidence. Patent Owner further states: "For example, Petitioner relies on these exhibits to prove the truth of sale values and shares, prescription values and shares, and other information described therein, rendering this information hearsay to the extent Petitioner attempts to rely on them to prove the truth of any matter therein, including any purported secondary considerations. See Fed. R. Evid. 801, 802 (inadmissible hearsay)."

Response	Exhibit 1038 is an compilation of data from standard sales and reporting documents. These documents were considered by Mr. McDuff in formulating his opinions, are at least the kinds of documents upon which an expert may rely, and may be referred to by Mr. McDuff in any further testimony as such. <i>See</i> FRE 702, 703. Further, FRE 1006 permits the use of a summary or chart to present voluminous data. Exhibit 1038 is referenced as an exhibit to Mr. McDuff's declaration, which is given under the penalty of perjury.
Exhibit 1039	
Objection(s)	FRE 401-403, 801-802, 901-902; Containing hearsay; Lacking Foundation; Assuming facts not in evidence. Patent Owner further states: "For example, Petitioner relies on these exhibits to prove the truth of sale values and shares, prescription values and shares, and other information described therein, rendering this information hearsay to the extent Petitioner attempts to rely on them to prove the truth of any matter therein, including any purported secondary considerations. <i>See</i> Fed. R. Evid. 801, 802 (inadmissible hearsay)."
Response	Exhibit 1039 is an compilation of data from standard sales and reporting documents. These documents were considered by Mr. McDuff in formulating his opinions, are at least the kinds of documents upon which an expert may rely, and may be referred to by Mr. McDuff in any further testimony as such. <i>See</i> FRE 702, 703. Further, FRE 1006 permits the use of a summary or chart to present voluminous data. Exhibit 1039 is referenced as an exhibit to Mr. McDuff's declaration, which is given under the penalty of perjury.
Exhibit 1040	
Objection(s)	FRE 401-403, 801-802, 901-902; Containing hearsay; Lacking Foundation; Assuming facts not in evidence. Patent Owner further states: "For example, Petitioner relies on these exhibits to prove the truth of sale values and shares, prescription values and shares, and other

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