

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARGENTUM PHARMACEUTICALS LLC

Petitioner

v.

CIPLA LIMITED

Patent Owner

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Case No. IPR2017-00807

U.S. Patent No. 8,168,620

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**CIPLA LIMITED'S OBJECTIONS TO EVIDENCE  
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

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Patent Trial and Appeal Board

U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

## **Cipla Limited's Objections to Evidence**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Cipla Limited ("Cipla") timely objects under the Federal Rules of Evidence ("FRE") to the admissibility of Exhibits 1005, 1013, 1014, 1015, 1016, 1022, 1024, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034-1049, 1051, 1052, and 1054 as well as ¶¶1-11, 13-17, 21, 24-31, 42-44, 52-53, 55-56, 58, 62-63, 65, 66, 68-72, 77, 84-90, 95, 96, 98, and 104-118 of Exhibit 1003 and ¶¶1-13, 16-20, 27, 32-35, 39-42, 44-49, 54, 59, 61, and 72-77 of Exhibit 1004. Each of these exhibits was submitted by Argentum in support of its Petition. These objections provide notice to Argentum that Cipla may move to exclude these Exhibits, or portions thereof, under 37 C.F.R. § 42.64(c).

### **I. Exhibits 1045, 1046, 1047, 1048, ¶¶110 and 115 of Exhibit 1003, and ¶75 of Exhibit 1004 are Irrelevant and More Prejudicial than Probative.**

Cipla objects to each of Exhibits 1045, 1046, 1047, and 1048 under FRE 401 and 402 because each is irrelevant to this proceeding. Under 35 U.S.C. § 311(b), a petitioner may request cancellation of a patent claim "only on the basis of prior art consisting of patents or printed publications." But Exhibits 1045, 1046, 1047, and 1048 post-date the priority date of the '620 patent and are therefore not "prior art consisting of patents or printed publications," making them irrelevant here.

Cipla also objects to Exhibits 1045, 1046, 1047, and 1048 under FRE 403 because they are more prejudicial than probative: they contain prejudicial statements about what was known in the art *after* the invention date of the '620 patent, not before.

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Cipla also objects to ¶¶110 and 115 of Exhibit 1003, which rely on Exhibits 1045 and 1047, respectively, and ¶75 of Exhibit 1004, which relies on Exhibits 1046 and 1048. These paragraphs are consequently irrelevant and prejudicial under FRE 401 and thus are not admissible under FRE 402 and 403.

### **II. Exhibit 1005 is Irrelevant and More Prejudicial Than Probative.**

Cipla objects to Exhibit 1005 under FRE 402 and 403. Argentum relies on Exhibit 1005 to present a claim construction in its Petition (Paper 2, 7-8), but neither Argentum nor its experts rely on that construction for any issue relevant to this proceeding. Because Exhibit 1005 has no bearing on any issue in dispute in this proceeding, any probative value of this document is substantially outweighed by the danger of confusing the issues.

### **III. Exhibits 1013, 1024, 1027, 1033, 1049, ¶¶52, 53, 55, 56, 58, 65, 71, and 98 of Exhibit 1003, and ¶¶27, 35, 39, 41, 44, 45, 54, 59, 61, 72, 74, and 75 of Exhibit 1004 are Incomplete, More Prejudicial than Probative, or Rely Upon Incomplete or Prejudicial Exhibits.**

Cipla objects to Exhibits 1013, 1024, 1027, 1033, and 1049 under FRE 106. Exhibits 1013, 1027, 1033, and 1049 appear to be excerpts of larger documents or books, and thus they are incomplete. Likewise, Exhibit 1024 appears to be missing at least a title page and identification of the authors of the article.

Cipla also objects to Exhibits 1013, 1027, 1033, and 1049 under FRE 403. Argentum's decision to selectively extract only the portions of these books that address the claim limitations is evidence of hindsight, and as such, Exhibits 1013,

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1027, 1033, and 1049 are more prejudicial than probative.

Cipla also objects to ¶¶52, 53, 55, 56, 58, 65, 71, and 98 of Exhibit 1003 because these paragraphs rely on incomplete Exhibit 1024. Cipla objects to ¶¶39 and 45 of Exhibit 1004 because they rely on incomplete and prejudicial Exhibit 1013. Cipla objects to ¶44 of Exhibit 1004 because it relies upon incomplete and prejudicial Exhibit 1027. Cipla objects to ¶¶35, 41, 54, 59, 61, 72, and 74 of Exhibit 1004 because they rely on incomplete and prejudicial Exhibit 1033. Cipla also objects to ¶¶27, 74, and 75 of Exhibit 1004 because they rely on incomplete and prejudicial Exhibit 1049.

### **IV. Exhibits 1015, 1016, 1031, and ¶¶63, 66, 72, 89, and 95 of Exhibit 1003 Fail to Comply With 37 C.F.R. § 42.63(b).**

Cipla objects to Exhibits 1015, 1016, and 1031 because they fail to comply with 37 C.F.R. § 42.63(b), which states that “when a party relies on a document ... in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.” Exhibits 1015, 1016, and 1031 each contain portions in a foreign language, and Argentum has neither provided a translation of the foreign-language portions, nor provided an affidavit attesting to the accuracy of such a translation. Cipla also objects to ¶¶63, 66, 72, 89, and 95 of Exhibit 1003 because they rely on Exhibits 1015, 1016, and 1031.

### **V. Exhibits 1026, 1028, 1029, 1032, 1037, 1043 and 1044 are Inadmissible**

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### **Under 37 C.F.R. § 42.63(e) or are Otherwise Irrelevant.**

Cipla objects to Exhibits 1026, 1028, 1029, 1032, 1037, 1043, and 1044 because they fail to comply with 37 C.F.R. § 42.63(e), which states that “[i]f the exhibit is not filed, the exhibit list should note that fact.” Argentum’s exhibit list provides no information regarding Exhibits 1026, 1028, 1029, 1032, 1037, 1043, and 1044, and these exhibits are identified nowhere in Argentum’s Petition or its expert declarations. Accordingly, these exhibits fail to comply with § 42.63(e).

Alternatively, Cipla objects to Exhibits 1026, 1028, 1029, 1032, 1037, 1043, and 1044 as irrelevant under Federal Rule of Evidence 401 and are thus not admissible under Federal Rule of Evidence 402. 35 U.S.C. § 312(a)(3) requires, among other things, that a petition identify “the evidence that supports the grounds for the challenge to each claim,” as well as “copies of patents and printed publications that the petitioner relies upon in support of the petition.” None of these exhibits are cited in the Petition, and thus they are irrelevant to the grounds stated in the Petition.

### **VI. Exhibit 1035 is Illegible.**

Cipla objects to Exhibit 1035, portions of which are illegible.

### **VII. Exhibits 1014, 1026-1032 ,1034-1044, 1047-1049, 1051, 1052, and 1054, ¶¶6, 27, 53, 55, 69-70, 84, 86-90, 95, and 115 of Exhibit 1003, and ¶¶6, 27, 44-45, 59, and 75-77 of Exhibit 1004 are Irrelevant and/or Violate 37 C.F.R. § 42.24(a)(1)(i).**

Cipla objects to the use of Exhibits 1014, 1026-1032, 1034-1044, 1047-

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1049, 1051, 1052, and 1054, paragraphs 6, 27, 53, 55, 69-70, 84, 86-90, 95, and 115 of Exhibit 1003, and paragraphs 6, 27, 44-45, 59, and 75-77 of Exhibit 1004 under Federal Rules of Evidence 401, 402, and 403. The aforementioned exhibits are not substantively relied on, or even cited, in Argentum's Petition.

Consequently, these Exhibits do not appear to make any fact of consequence more or less probable than it would be without them. Cipla also objects to paragraphs 6, 27, 53, 55, 69-70, 84, 86-90, 95, and 115 of Exhibit 1003, and paragraphs 6, 27, 44-45, 59, and 75-77 of Exhibit 1004 because they rely on Exhibits 1014, 1026-1032, 1034-1044, 1047-1049, 1051, 1052, and 1054.

Alternatively, to the extent that Argentum asserts that the aforementioned exhibits *are* relevant, then Argentum must incorporate by reference ¶¶6, 27, 53, 55, 69-70, 84, 86-90, 95, and 115 of Exhibit 1003 and ¶¶6, 27, 44-45, 59, and 75 of Exhibit 1004. Doing so makes the Petition overly lengthy, violating the petition word count set forth in 37 C.F.R. § 42.24(a)(1)(i).

**VIII. Paragraphs 1-11, 13-17, 21, 24-31, 42-44, 56, 62, 68-69, 71, 77, 85-87, 96, 104-114, and 116-118 of Exhibit 1003 and Paragraphs 1-13, 16-20, 32-34, 40-42, 46-49, and 72-77 of Exhibit 1004 are Irrelevant.**

Cipla objects to paragraphs 1-11, 13-17, 21, 24-31, 42-44, 56, 62,<sup>1</sup> 68-69,

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<sup>1</sup> Argentum cited paragraphs 42-44, 56, and 62 in its Petition, but those citations appear only as part of a 23-paragraph citation. *See* Paper 2, 49 (“*see also id.* ¶¶41-64”).

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71, 77, 85-87, 96, 104-114, and 116-118 of Exhibit 1003 and paragraphs 1-13, 16-20, 32-34, 40-42, 46-49, and 72-77 of Exhibit 1004 under Federal Rules of Evidence 401-403 because they are irrelevant. Specifically, 35 U.S.C. § 312(a)(3) requires, among other things, that a petition identify “the evidence that supports the grounds for the challenge to each claim,” as well as “copies of patents and printed publications that the petitioner relies upon in support of the petition.” The aforementioned paragraphs are not cited anywhere in Argentum’s Petition, and accordingly, they do not make any fact of consequence in this proceeding more or less probable than it would be without them.

Cipla also objects to the aforementioned paragraphs insofar as Argentum’s reliance on these paragraphs would be impermissible, misleading, irrelevant, and unfairly prejudicial to Cipla. To the extent that Argentum attempts to make use of these paragraphs in the future to support new substantive positions, doing so would be untimely, in violation of the rules of this proceeding, and unfairly prejudicial to Cipla. Cipla further objects to Exhibits 1003 and 1004 to the extent they rely on exhibits to which Cipla objects above.

Respectfully Submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



## **Cipla Limited's Objections to Evidence**

Date: September 5, 2017

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**CERTIFICATE OF SERVICE (37 C.F.R. §§ 42.6(e))**

The undersigned hereby certifies that the above-captioned “Cipla Limited’s  
Objections to Evidence Pursuant to 37 C.F.R. § 42.64(b)(1)” was served in its  
entirety on September 5, 2017, upon the following parties via email:

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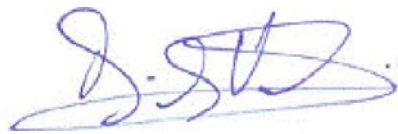
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