

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

3M Company, Merck & Co., Inc., and Merck Sharp & Dohme Corp.

Petitioners,

v.

AptarFrance S.A.S.,

Patent Owner.

Case IPR2018-01055
Patent No. 9,370,631 B2

**PETITIONERS' OBJECTIONS TO EVIDENCE
UNDER 37 C.F.R. § 42.64**

Petitioners 3M Company, Merck & Co., Inc., and Merck Sharp & Dohme Corp. (“Petitioners”) respectfully submit the following objections to exhibits filed on February 13, 2019 by Patent Owner Aptar France SAS (“Aptar” or “Patent Owner”) in conjunction with Patent Owner’s Response (Paper 23).

Exhibit 2016 is not Authenticated, is Incomplete, and violates 37 C.F.R. § 42.6(b)

Petitioners object to Exhibit 2016 as incomplete and not authenticated under Federal Rule of Evidence 106.

Exhibit 2016 purports to be an article titled “The History of Therapeutic Aerosols: A Chronological Review” by Stephen W. Stein and Charles G. Thiel. Exhibit 2016 appears to be a printout of a website allegedly containing the article, but it does not contain the page numbers from the original article. Moreover, Exhibit 2016 appears to have additional information in the margin of the website related to citations within the Stein and Thiel article, which is not included in the published version of the Stein and Thiel article.

Petitioners also object to Exhibit 2016 because Aptar’s submission of that exhibit violates 37 C.F.R. § 42.6(b). That rule governs “Previously filed paper[s]” and states that a “document already in the record of the proceeding must not be filed again, not even as an exhibit or an appendix, without express Board authorization.” 37 C.F.R. § 42.6(b). Petitioners submitted that same article, “The

History of Therapeutic Aerosols: A Chronological Review” by Stephen W. Stein and Charles G. Thiel as Exhibit 1042 to their Petition in this proceeding.

Exhibit 2019 is not Authenticated and is Incomplete

Petitioners object to Exhibit 2019 as incomplete under Federal Rule of Evidence 106 and not authenticated under Federal Rule of Evidence 901.

Exhibit 2019 purports to be a copy of the deposition transcript from the deposition of S. David Piper on January 25, 2019. Currently filed Exhibit 2019 is incomplete because it does not include an errata sheet signed by Mr. Piper.

Petitioners further object to Exhibit 2019 as not authenticated because it does not include an errata sheet signed by Mr. Piper. Accordingly, Aptar has failed to establish the accuracy of the information found therein.

Exhibit 2020 is Inadmissible Hearsay and is Not Authenticated

Petitioners object to Exhibit 2020 under Federal Rules of Evidence 801 and 802. Exhibit 2020 contains out-of-court statements by non-parties that Aptar seeks to use for the truth of the matter asserted, and Aptar does not provide any basis for the Patent Trial and Appeal Board to conclude that they fall within any hearsay exception.

Petitioners also object to Exhibit 2020 under Federal Rule of Evidence 901. “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is

what the proponent claims it is.” Fed. R. Evid. 901(a). Aptar has failed to provide evidence regarding the origin of the video. The speaker in the video is allegedly a third-party named “Bill Hammack” of the University of Illinois. Aptar has not included any affidavits relating to the authenticity of the video.

Respectfully submitted,

Date: February 21, 2019

By: /Steven D. Maslowski/
Steven D. Maslowski
Registration No. 46,905
Counsel for Petitioners
3M Company, Merck & Co., Inc., and
Merck Sharp & Dohme Corp.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioners' Objections to Evidence Under 37 C.F.R. § 42.64 was served on counsel of record on February 21, 2019 by filing this document through the End-to-End System, as well as delivering a copy via electronic mail to counsel of record for the Patent Owner at the following addresses:

Ashley N. Moore
amoore@mckoolsmith.com
Robert M. Manley
rmanley@mckoolsmith.com
Ryan Hargrave
rhargrave@mckoolsmith.com
McKool Smith P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201

Respectfully submitted,

Date: February 21, 2019

By: /Steven D. Maslowski/
Steven D. Maslowski
Registration No. 46,905
Counsel for Petitioners
3M Company, Merck & Co., Inc., and
Merck Sharp & Dohme Corp.