

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUSION PHARMACEUTICALS, INC.
Petitioner,

v.

UNIVERSITÄT HEIDELBERG AND THE EUROPEAN ATOMIC ENERGY
COMMUNITY (EURATOM), REPRESENTED BY THE EUROPEAN
COMMISSION,
Patent Owner.

Case No. IPR2023-00551

U.S. Patent No. 10,980,901

Issue Date: April 20, 2021

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
SUBMITTED WITH PATENT OWNER'S PRELIMINARY RESPONSE**

Pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”), Petitioner Fusion Pharmaceuticals, Inc. (“Fusion”) objects to the admissibility of evidence filed by Universität Heidelberg (“Patent Owner”) on May 17, 2023 with its Preliminary Response. These objections are timely filed pursuant to 37 C.F.R. § 42.64(b)(1), and provide notice to Patent Owner that Petitioners may move to exclude the exhibits below as inadmissible.

1. Exhibits 2001 and 2004–2006

Exhibits 2001 and 2004–2006 were published after the earliest filing date of U.S. Patent No. 10,980,901 (“the ’901 Patent”) and therefore cannot provide any information as to the knowledge of a person of ordinary skill in the art or the state of the art as of the date of the patent. As such, Fusion objects to Exhibits 2001 and 2004–2006 under FRE 401 and 402 to the extent used to establish the state of the art or the knowledge of a person of ordinary skill in the art because the exhibits are not relevant under FRE 401 and therefore not admissible under FRE 402. Fusion further objects to this exhibit under FRE 403 because any probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, wasting time, or needlessly presenting cumulative evidence.

2. Exhibit 2010

Patent Owner cites to Exhibit 2010 in its Preliminary Response but does not list the exhibit in its exhibit list and has not filed or produced an exhibit with that

number. As such, Fusion reserves all objections to any Exhibit 2010 that Patent Owner may seek to produce in the future. Specifically, Fusion objects to Exhibit 2010 under FRE 403 because any probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, wasting time, or needlessly presenting cumulative evidence at least because Fusion has not seen the document and therefore cannot understand what document is being referenced. Likewise, Fusion objects to Exhibit 2010 under FRE 106 and 1002 because Patent Owner did not produce the document.

Moreover, there is no evidence in the record establishing the identity of Exhibit 2010. As such, Fusion objects to Exhibit 2010 under FRE 901 for lacking authentication.

Respectfully submitted,

Dated: August 29, 2023

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), I certify that on this 29th day of August, 2023, I caused to have served a copy of the PETITIONER’S OBJECTIONS TO PATENT OWNER’S EVIDENCE SUBMITTED WITH PATENT OWNER’S PRELIMINARY RESPONSE by electronic mail to:

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Dated: August 29, 2023

Respectfully Submitted,

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