

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 OWNERS' EVIDENCE
SUBMITTED WITH PATENT OWNERS' 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 and The European Atomic Energy Community (EURATOM), Represented by The European Commission, (collectively, “Patent Owners”) on November 22, 2023 with their Response. These objections are timely filed pursuant to 37 C.F.R. § 42.64(b)(1), based on Patent Owners’ filing and service of Patent Owners’ Response on November 22, 2023. This provides notice to Patent Owners that Petitioner may move to exclude the exhibits below.

1. Exhibits 2009, 2012, 2023, 2027, 2035, 2042, 2044–45, and 2051–53

Fusion objects to Exhibits 2009, 2012, 2023, 2027, 2035, 2042, 2044–45, and 2051–53 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. Exhibits 2009, 2012, 2023, 2027, 2035, 2042, 2044–45, and 2051–53 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. Fusion further objects to these exhibits 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 2026

Fusion objects Exhibit 2026 as containing inadmissible hearsay under FRE 802, not within any hearsay exception. For example, on page 59 of Patent Owners' Response (hereinafter, "Response"), Patent Owners rely on Exhibit 2026 for the truth of the matter asserted, and no hearsay exception applies.

3. Exhibit 2029

Fusion objects to Exhibit 2029 under FRE 106 and 1002 because Patent Owners did not produce the document. Patent Owners cite to Exhibit 2029 in its Response, but the hyperlink provided was invalid. As such, Fusion objects to Exhibit 2029 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.

Fusion objects to Exhibit 2029 under FRE 901 for lacking authentication. There is no evidence in the record establishing the identity of Ex. 2029. While Patent Owners purport that Exhibit 2029 is a PubMed search, Patent Owners did not provide a valid hyperlink or specific search parameters. *See* Response at 62. Fusion cannot examine the search as is, and cannot replicate the search without more information.

Fusion objects Exhibit 2029 as being inadmissible hearsay under FRE 802, not within any hearsay exception.

4. Exhibit 2030

Fusion objects to Exhibit 2030 under FRE 106 and 1002 because Patent Owners did not produce the document. Patent Owners cite to Exhibit 2030 in their Response but did not provide the full link to the Google search that Patent Owners conducted. As such, Fusion objects to Exhibit 2030 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.

Fusion objects to Exhibit 2030 under FRE 901 for lacking authentication. There is no evidence in the record establishing the identity of Ex. 2030. While Patent Owners purport that Exhibit 2030 is a Google Scholar search, Patent Owners did not provide the full link or specific search parameters. *See* Response at 62. Fusion cannot examine the search as is, and cannot replicate the search without more information.

Fusion objects Exhibit 2030 as being inadmissible hearsay under FRE 802, not within any hearsay exception.

5. Exhibit 2031

Fusion objects to Exhibit 2031 under FRE 106 and 1002 because Patent Owners did not produce the document. Patent Owners cite to Exhibit 2031 in its Response but did not provide any Altmetric search parameters, terms, or criterion used. As such, Fusion objects to Exhibit 2031 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.

Fusion objects to Exhibit 2031 under FRE 901 for lacking authentication. There is no evidence in the record establishing the identity of Ex. 2031. While Patent Owner purports that Exhibit 2031 is an Altmetric citation comparison, Patent Owner did not provide any specific Altmetric search parameters or criterion. *See* Response at 63. Fusion cannot examine the search as is, and cannot replicate the search without more information.

Fusion objects Exhibit 2031 as being inadmissible hearsay under FRE 802, not within any hearsay exception.

6. Exhibit 2010

Petitioner objects to Exhibit 2010 as follows:

Petitioner objects to the portions below as improper expert testimony under FRE 701–703 and as lacking foundation under FRE 602. These portions of Patent Owners’ expert declaration are not based on scientific, technical, or other specialized knowledge; are not based on sufficient facts or data; and are based on facts or data that would be otherwise inadmissible. Therefore, these opinions are improper expert opinion testimony.

Pages 15–16, in their entirety.

Page 17 – “The efficacy of or tumor types.”

Pages 20–21 – “Standard laboratory mice detect it in animals” and
“Another main limitation required to be safe”

Page 22 – “Add to this infinitely more complicated.”

Page 23 – “The same applies false positive effect.”

Page 26 “Alpha-emitting expel beta particles.”

Page 28 – “Expulsion it becomes stable.”

Page 39 – “Efficacy is a high efficacy.”

Page 46 – “The citation numbers the case here.”

Page 44 – “The degree of likely followed.”

Pages 44–46, in their entirety.

Pages 47–48 – “Another surprising outcome which was unknown.”

Page 49 – “In fact, a combination.”

Page 54 – “This data demonstrates degree of accuracy.”

Page 64 – “The POSA would any guidance.”

Pages 67–68 – “The significant differences very different diseases”

Pages 69–70 – “Based on this not to use.”

Page 77 – “Third, Dr. Abergel entirely different one.”

Page 78 – “To the extent the [']901 Patent”

Pages 90–91 – “I have been of the invention.”

Page 93 – “These results also of the invention.”

Petitioner further objects to the portion below 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:

Page 46 – “The citation numbers the case here.”

Petitioner objects to the portions of Exhibit 2010 as containing inadmissible hearsay under FRE 802, not within any hearsay exception:

Page 21 – “Perhaps Dr. Richard Klausner in humans.””

Pages 44–46 – “According to Pubmed . . . obvious or expected.”

Petitioner also objects to the portions of pages 44–46 that rely on Ex. 2029,

Ex. 2030, and Ex. 2031 under FRE 403 for the reasons listed above for Ex. 2029.
Ex. 2030, and Ex. 2031.

Petitioner further objects to any and all portions of Ex. 2010 that rely on the other exhibits objected to, under FRE 401 and FRE 402 because these portions are not relevant under FRE 401 and therefore not admissible under FRE 402.

Petitioner further objects 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. Petitioner further objects to these portions as containing inadmissible hearsay under FRE 802, not within any hearsay exception.

Petitioner further objects to Exhibit 2010 because Patent Owners list Declaration of Dr. Thomas A. Hope as Exhibit 2010 in their Response, but Patent Owners have already listed Exhibit 2010 in the exhibit list included with their Preliminary Response. As such, Petitioner objects to the duplicative exhibit under FRE 403 because probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, wasting time, or needlessly presenting cumulative evidence.

Dated: Nov. 30, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), I certify that on this 30th day of November, 2023, I caused to have served a copy of the PETITIONER’S OBJECTIONS TO PATENT OWNERS’ EVIDENCE SUBMITTED WITH PATENT OWNERS’ RESPONSE by electronic mail to:

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Dated: Nov. 30, 2023

Respectfully Submitted,

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