UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AJINOMOTO CO., INC.
Petitioner,

v.

ABTIS CO., LTD.
Patent Owner

Patent No. 11,896,675
Issue Date: February 13, 2024

Title: SITE-SPECIFIC ANTIBODY CONJUGATION AND ANTIBODY-DRUG CONJUGATE AS SPECIFIC EMBODIMENT THEREOF

Inter Partes Review No. IPR2025-00283

PETITIONER'S MOTION TO EXCLUDE

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I. INTRODUCTION

Ajinomoto Co., Inc. ("Ajinomoto" or "Petitioner") moves to exclude Patent Owner AbTis Co., Ltd.'s ("Patent Owner") Exhibits 2008 and 2009 under 37 C.F.R. § 42.64(c) and the Scheduling Order (Paper 17) on the following grounds:

Exhibit	Description	Reason to Exclude
EX2008	Second Declaration of Dr. Zhaohui Sunny Zhou	Not authenticated; hearsay
EX2009	English Translation of Kirmse et al., "Destabilisierte 2-Norbornyl"	Not authenticated; no verified translation

Patent Owner relied on these exhibits in its Reply to Petitioner's Opposition to Patent Owner's Motion to Amend (Paper No. 28) ("Patent Owner's Reply"), and thus Petitioner also moves to exclude the portions of Patent Owner's Reply that rely on these exhibits, as identified below.

II. PETITIONER TIMELY OBJECTED

A. EX2008: Second Declaration of Dr. Zhaohui Sunny Zhou

Petitioner timely objected to EX2008 under Federal Rule of Evidence ("FRE") 802, 901, and 902. Paper 29, 1-2. This exhibit should be excluded under each of these rules. No supplemental evidence was timely filed to address these objections.

B. EX2009: English Translation of Kirmse et al., "Destabilisierte 2-Norbornyl"

Petitioner timely objected to EX2009 under 37 C.F.R. § 42.63(b). Paper 29, 2. This exhibit should be excluded under this rule. No supplemental evidence was timely filed to address this objection.

III. ARGUMENT

A. EX2008 Should Be Excluded

EX2008 purports to be a declaration, but without authentication because it lacks the statutorily-required oath or caveat for a declaration. 35 U.S.C. § 25; 37 CFR § 42.2; 37 CFR § 1.68. As such, EX2008 falls short of the statutory threshold for a legally-cognizable declaration. This is not mere pedantry. Statements lacking the required oath or caveat "thwart the purpose of our rules regarding affidavits/declarations, and forgo the guarantee of truthfulness imparted by a declarant's acknowledgment of the possible consequences—fine, imprisonment, or penalty of perjury." *Int'l Bus. Machs. Corp. v. Intellectual Ventures II LLC*, IPR2015-01323, Paper 38, 9-11 (2016) (sustaining objection, noting failure to file supplemental evidence).

Similarly, EX2008 constitutes hearsay without exception because it represents an out-of-Board statement not "made under oath or other circumstances that impress the speaker with the solemnity of his statements . . . ." *Chambers v. Mississippi*, 410 U.S. 284, 298 (1973) ("The hearsay rule . . . is based on experience and

grounded in the notion that untrustworthy evidence should not be presented to the triers of fact.").

Accordingly, EX2008 should be excluded in its entirety. In addition, the statements in Patent Owner's Reply that rely on EX2008 should also be excluded. These statements appear on pages 2-12 of Patent Owner's Reply.

B. EX2009 Should Be Excluded

EX2009 purports to be a translation of Kirmse et al., "Destabilisierte 2-Norbornyl" (1985). However, Patent Owner did not establish that EX2009 is a true and accurate representation of the original Kirmse article. 37 C.F.R. § 42.63(b). Despite these objections, Patent Owner took no action and failed to serve any supplemental evidence relating to EX2009.

EX2009 contains neither the purported German document being translated, nor a verified translator's declaration. Even where an English translation of a document has been submitted in earlier prosecution by Petitioner, a Patent Owner must provide a verified translator's declaration relating to a translated reference it wishes to rely upon. *Norman Int'l Inc. v. Andrew J. Testamentary Trust et al.*, IPR2014-00283, Paper 52 at 13 (P.T.A.B., June 18, 2015) (citing 37 C.F.R. § 42.63(b)'s separate requirement for translation); *accord Stevens v. Tamai*, 366 F.3d 1325, 1334 (Fed. Cir. 2004) (error to accord priority without certified

translation in trial record, even though a translation appeared in the prosecution history).

Moreover, § 42.63(b) is an additional requirement, not authorization to file a translation *instead of* the original document. Indeed, a foreign public document must be certified by the appropriate foreign certifying authority. FRE 902(3). By omitting the filing of the purported German document, Patent Owner necessarily also omitted the required certification of the purported foreign document. Patent Owner made no effort to cure these defects, which must be strictly enforced. *United States v. Perlmuter*, 693 F.2d 1290, 1292 (9th Cir. 1982) ("Although the trial court was correct in finding that neither Rule 901 nor 902(3) was complied with, the court did abuse its discretion in holding the evidence authentic and admissible."); *id*. at 1293 ("[C]ertainly it is not enough that the documents present an 'aura of authenticity.' Thus, the trial court abused its discretion by admitting the unauthenticated documents into evidence.").

For these reasons, EX2009 should be excluded in its entirety. Similarly, the Second Zhou Declaration (EX2008) at ¶¶ 19-21, which cite to EX2009, and the portions of Patent Owner's Reply at pp. 10-11 that cite ¶¶ 19-21 of the Second Zhou Declaration, should be excluded (in addition to the reasons for excluding the entire Second Zhou Declaration set forth above).

IV. CONCLUSION

For at least the reasons provided above, Petitioner urges the Board to grant this motion and exclude Exhibits 2008 and 2009, as well as the arguments of Patent Owner that rely on these exhibits as set forth above.

Respectfully submitted,

Dated: April 17, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner's Motion to Exclude was served April 17, 2026, by electronic mail to the attorneys of record for Patent Owner at the following address:

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