

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 OPPOSITION TO
MOTION TO SUBMIT SUPPLEMENTAL EVIDENCE**

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Petitioner Ajinomoto Co., Inc. (“Ajinomoto”) respectfully opposes Patent Owner AbTis Co., Ltd.’s (“AbTis”) Motion to Submit Supplemental Evidence (“Motion”). AbTis’ Motion distorts the record and seeks excusal from its failures to comply with the Board’s evidentiary requirements and to cure that non-compliance in response to Ajinomoto’s timely objections. The Motion should be denied.

I. BACKGROUND

AbTis filed its Motion to Amend on October 31, 2025. Paper 23. That motion included the Declaration of Zhaohui Sunny Zhou, Ph.D. (“Zhou Declaration”). EX2004. The Zhou Declaration concluded with a statement warning of the consequences of willful false statements, and was made under penalty of perjury. EX2004 at ¶112. Ajinomoto filed its Opposition on January 23, 2026. Paper 25.

AbTis submitted the Declaration of Dr. Zhaohui Sunny Zhou, Ph.D. (“Second Zhou Declaration”) (EX2008) with its Reply filed March 6, 2026 (Paper 28). The Second Zhou Declaration did not include such a warning and was not made under penalty of perjury. On March 13, 2026, Ajinomoto objected to AbTis’ evidence, objecting to the Second Zhou Declaration as hearsay under FRE 802, and “under FRE 901-902 as lacking authentication and not self-authenticating because it lacks sufficient indicia that the exhibit is what it purports to be.” Paper 29 at 2. AbTis took no action in response, either by timely serving supplemental evidence or to ask for clarification, despite now arguing that the objections were ambiguous. Ajinomoto

filed a Motion to Exclude on April 17, 2026, seeking exclusion of the Second Zhou Declaration based on its hearsay and authentication objections. Paper 34 at 5-6.

II. LEGAL STANDARD

“Uncompelled direct testimony must be submitted in the form of an affidavit.” 37 CFR § 42.53(a). An “affidavit” means “affidavit or declaration under [37 CFR] § 1.68 . . . [A] declaration under 28 U.S.C. 1746 may be used as an affidavit.” 37 CFR § 42.2. A declaration must include a “warn[ing] that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001),” or state it is made under penalty of perjury. 37 CFR § 1.68; 28 U.S.C. § 1746. “Whether required by statute or regulation, it is clear any declaration or affidavit submitted in IPR proceedings must contain an oath or declaration.” *United Therapeutics Corp. v. Liquidia Techs., Inc.*, No. 2022-2133, 2024 WL 3199314, *3 (Fed. Cir. 2024) (explaining that the “purpose of the oath or declaration is to provide a guarantee of truthfulness where, as here, the testimonial evidence is in paper form”).

“Evidence that is not taken, sought, or filed in accordance with [Subpart A] is not admissible.” 37 CFR § 42.61. An objection “must identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence.” 37 CFR § 42.64(b)(1). “The party relying on evidence to which an objection is timely served may respond to the objection by serving supplemental evidence within ten business days of service of the objection.” 37 CFR § 42.64(b)(2).

III. ARGUMENT

A. Ajinomoto's Objections Were Sufficiently Particular, and AbTis Waived Its Opportunity to Cure

AbTis claims that Ajinomoto's authentication objection lacked sufficient particularity because it did not refer to the warning against willful false statements or the penalty of perjury. Paper 37 at 2. AbTis does not cite any prior Board decision finding a similar objection insufficiently particular on the basis, and offers no justification for its failure to seek clarification. On the other hand, in *Liquidia Techs., Inc. v. United Therapeutics Corp.*, IPR2020-00770, Paper 45 at 54-56 (P.T.A.B. 2021), the Board rejected the exact argument AbTis now makes. There, as here, the party seeking to exclude had objected to an unsworn declaration "under FRE 901-902 as lacking authentication and not self-authenticating because it lacks sufficient indicia that the exhibit is what it purports to be." *Id.* at 55. The opposing party made the same argument that AbTis makes: "[W]e didn't realize that it was the perjury statement in particular that they were referring to." *Id.* at 55. The Board rejected that argument (*id.* at 56):

We find Patent Owner's objection sufficient to put Petitioner on notice that the authentication of Exhibit 1002 is problematic; no more is required of Patent Owner. The fact that Petitioner did not realize the authentication objection is directed to the lack of perjury statement, instead of the lack of a signature, does not make Patent Owner's objection ambiguous.

As in *Liquidia*, Ajinomoto's objection gave AbTis adequate notice, and

AbTis' assertion that it was "deprived of a meaningful opportunity to cure" is mistaken. Paper 37 at 1. All the more so as to Ajinomoto's hearsay objection, which AbTis has ignored entirely, much less argue it lacked sufficient notice of it. There is thus not even a suggestion that it was deprived of an opportunity to cure. As to both objections, AbTis had its statutorily afforded opportunity to cure by serving supplemental evidence within ten business days, and AbTis waived that opportunity.

B. AbTis Fails to Show Good Cause for Leave to Supplement

AbTis has already had two opportunities to proffer a second round of opinions from Dr. Zhou in accordance with the rules and should not be afforded a third. As in its Opposition to Ajinomoto's Motion to Exclude, AbTis takes a cavalier attitude toward the requirement that declarations be submitted under penalty of perjury or with a warning about willful false statements. AbTis trivializes its failure as "omission of a few words from a procedural paragraph" (Paper 37 at 5) but those "few words" are not a meaningless box to be checked. They go squarely to the heart of the reliability of the proffered evidence, *see Chambers v. Mississippi*, 410 U.S. 284, 298 (1973), and the Board's rule requiring them exists for that reason.

Sony v. Fujifilm is distinguishable. Paper 37 at 4. There, patent owner submitted the defective declaration in its Patent Owner's Response. Rather than promptly object, the petitioner waited until its reply and argued the Board should give the declaration no weight. *See Sony Corp. v. Fujifilm Corp.*, IPR2018-00876,

Paper 26 at 2-3 (P.T.A.B. April 2, 2019). The Board stressed that the patent owner “acted immediately upon notice of the omission” asking to submit supplemental evidence two days later. *Id.* at 2, 4. Here, AbTis received notice in Ajinomoto’s March 13 objections but made no effort to cure or even to clarify. Only when Ajinomoto moved to exclude did AbTis act.

This case is more like the *ZTE* and *IBM* cases that *Sony* distinguished. As *Sony* noted, the patent owner in *ZTE*, like AbTis, “took no affirmative steps to cure the defect” after first receiving notice. IPR2018-00876, Paper 26 at 4 (citing *ZTE (USA) Inc. v. Evolved Wireless LLC*, IPR2016-00757, Paper 42 at 24 (P.T.A.B. Nov. 30, 2017)). In *IBM*, as here, the party seeking to exclude “timely served objections to a declaration and [the opposing party] did not serve supplemental evidence in response” IPR2018-00876, Paper 26 at 4 (citing *Int’l Bus. Machs. Corp. v. Intellectual Ventures II LLC*, IPR2015-01323, Paper 38, 9-12 (P.T.A.B. Sept. 27, 2015)).

This is not a case where a party misunderstood a legal requirement. AbTis included the required statements in the first Zhou declaration. Having failed to do so in the Second Zhou Declaration and having failed to cure once notified, for AbTis to now claim it lacked notice while dismissing the importance of these requirements reflects disregard for those requirements, not good cause to excuse non-compliance.

IV. CONCLUSION

Ajinomoto respectfully requests that the Board deny the Motion.

Respectfully submitted,

Dated: May 1, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner's Opposition to Motion to Submit Supplemental Evidence was served May 1, 2026, by electronic mail to the attorneys of record for Patent Owner at the following address:

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