

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 REPLY TO OPPOSITION TO MOTION TO EXCLUDE

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I. INTRODUCTION

Petitioner Ajinomoto Co., Inc. (“Ajinomoto”) respectfully replies to Patent Owner AbTis Co., Ltd.’s (“AbTis”) Opposition to Petitioner’s Motion to Exclude. AbTis’ opposition concedes Ajinomoto’s objections to the Second Zhou Declaration (EX2008). Exclusion is not “extraordinary.” Paper 35 at 1. It is the proper result for inadmissible evidence. Ajinomoto’s Motion should be granted as to Exhibit 2008.

Based on AbTis’ representation that EX2009 is an original English version, not a translation prepared for these proceedings as its exhibit description implied, Ajinomoto withdraws its objection under 37 C.F.R. § 42.63(b). *See* Paper 35 at 6-7.

II. THE BOARD SHOULD EXCLUDE EX2008

Ajinomoto’s Motion seeks exclusion of EX2008 based on two timely raised objections: (1) lack of authentication under FRE 901-902, and (2) hearsay without exception under FRE 802. Paper 29 at 2; Paper 34 at 5-6. AbTis addresses only authentication; it ignores the hearsay objection entirely. AbTis does not dispute that EX2008 contained no warning about willful false statements and was not given under penalty of perjury; it therefore lacked authentication, is not self-authenticating, and is hearsay without exception; and Ajinomoto timely raised these objections. Unable to dispute the foregoing, AbTis argues that Ajinomoto’s objections were not “specific” enough, and the lack of required warning or perjury statement is a non-prejudicial “technical” defect. These arguments should be rejected.

A. Ajinomoto’s Objections Were Timely and Specific, and AbTis Waived Its Right to Serve Supplemental Evidence

AbTis argues that Ajinomoto’s objection did not “identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence.” 37 C.F.R. § 42.64(b)(1); Paper 35 at 1-2. This argument has no merit. Ajinomoto’s objection expressly put AbTis on notice that its declaration was not authenticated under FRE 901-902. Paper 29 at 2. The only reason that a signed declaration such as this would lack authentication is that it lacks the required statements regarding penalty of perjury or willful false statements. Indeed, AbTis does not now claim that it did not understand the objection or was unsure how the declaration lacked authentication. While AbTis claims it could not be “expected to intuit that a penalty-of-perjury statement—*rather than any number of other possible authentication issues*—is the alleged problem” (Paper 35 at 3 (emphasis added)), it does not identify a single “other possible authentication issue” that this declaration might have had. If AbTis had truly been unsure, it could have asked—it did not.

AbTis’ argument is contradicted by the *Liquidia* decision it cites. There, the movant raised the same authentication objection—“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.” *Liquidia Techs., Inc. v. United Therapeutics Corp.*, IPR2020-00770, Paper 45 at 55 (P.T.A.B. Oct. 8, 2021). The opposing party made the same argument AbTis now makes, and the Board rejected it:

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.

Id. at 56. As in *Liquidia*, Ajinomoto's timely objection gave AbTis adequate notice of the defects in the Second Zhou Declaration. AbTis had its statutorily afforded opportunity to cure by serving supplemental evidence within ten business days, *see* 37 C.F.R. § 42.64(b)(2), and AbTis waived that opportunity.

AbTis' "selective" specificity argument fares no better. AbTis contends that supposedly greater specificity in other objections "confirms that no such notice was provided" as to the lack of authentication. Paper 35 at 2-3. This argument is illogical, and AbTis offers no legal authority for it. Whether other objections were stated with even greater particularity has no bearing on whether the authentication objection was stated with "sufficient particularity." 37 C.F.R. § 42.64(b)(1). As explained above, and shown by *Liquidia*, Ajinomoto's authentication objection was sufficient.

As noted, AbTis ignores Ajinomoto's hearsay objection and makes no argument that it was not sufficiently particular.

B. AbTis' Omission Is Prejudicial and Not Merely "Technical"

AbTis attempts to excuse its failure to comply with the Board's evidentiary requirements by repeatedly dismissing them as "technical," "formal," and "non-

substantive.” Paper 35 at 3-4. For example, AbTis states that the lack of a warning or perjury statement is “purely technical and is not directed to the substance, reliability, or credibility of the expert’s testimony.” Paper 35 at 3. On the contrary, the failure to impress upon a witness that a statement is under oath goes to the heart of its reliability as evidence. *See Chambers v. Mississippi*, 410 U.S. 284, 298 (1973).

Recognizing this, the Board has repeatedly declined to consider declarations lacking these statements. In such cases, the Board has emphasized that to give weight to such statements “would 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 at 11 (P.T.A.B. 2016); *see also Intel Corp. v. Alacritech, Inc.*, IPR2017-01395, Paper 8 at 7 (P.T.A.B. 2017); *Intel Corp. v. Alacritech, Inc.*, IPR2017-01402, Paper 8 at 6 (P.T.A.B. 2017); *ZTE (USA) Inc. v. Evolved Wireless LLC*, IPR2016-00757, Paper 42 at 24 (P.T.A.B. 2017).

AbTis claims there is no issue as to reliability, but, as the Board has recognized, hearsay is inherently unreliable. *See, e.g., Cook Grp. Inc. et al v. Boston Sci. Scimed, Inc.*, IPR2017-00135, Paper 82 at 31 (P.T.A.B. 2018) (excluding evidence as “hearsay and thus unreliable”). AbTis relies on *Liquidia* in arguing a lack of prejudice. However, *Liquidia* is distinguishable and demonstrates the

prejudicial nature of admitting unsworn testimony. The Federal Circuit reasoned that patent owner’s “strategic decision to ‘rigorously’ depose Dr. Winkler” resulted in testimony that provided the “hallmark guarantees of truthfulness that supplant the missing oath or declaration.” Based on those facts, which are missing here, the Federal Circuit saw “no room to fault the Board’s decision to rely on the Winkler Declaration.” *United Therapeutics Corp. v. Liquidia Techs., Inc.*, No. 2022-2133, 2024 WL 3199314, *3 (Fed. Cir. June 27, 2024).

AbTis is not entitled to have the “corrected” declaration (EX2012) considered in deciding Ajinomoto’s Motion. AbTis argues it “submit[ted] the corrected declaration as Exhibit 2012 to this Opposition in accordance with the Board’s rules governing motions to exclude,” citing the Board’s Consolidated Trial Practice Guide, November 2019. Paper 35 at 4 (citing Guide at 78). That guidance refers to “supplemental evidence” *timely served in response to objections*. AbTis’ “corrected” declaration was *not* timely served and deserves no weight in deciding the Motion.

Finally, exclusion would not “reward Petitioner’s failure to comply with the specificity requirements of § 42.64(b)(1).” Paper 35 at 6. Admission would only save *AbTis* from its own repeated errors, excuse its neglect of the requirements for admissibility, and encourage laxity in adhering to the Board’s evidentiary rules.

III. CONCLUSION

Ajinomoto respectfully requests that the Motion be granted.

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 Reply to Opposition to Motion to Exclude was served May 1, 2026, by electronic mail to the attorneys of record for Patent Owner at the following address:

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