

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PFIZER INC.
Petitioner

v.

POGONA, LLC
Patent Owner

Case IPR2026-00189
U.S. Patent No. 11,058,757

**PETITIONER PFIZER INC.'S OBJECTIONS TO
PATENT OWNER'S PRELIMINARY EVIDENCE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Pfizer Inc. (“Pfizer”) objects as follows to the admissibility of evidence filed and served by Patent Owner Pogona, LLC with its Preliminary Response.

Pfizer notes that Exhibits 2001 through 2005 cited in Patent Owner’s Updated Exhibit List (Paper 13) do not correspond to Exhibits 2001 through 2005 cited in Patent Owner’s Discretionary Denial Brief (Paper 9). The documents identified as Exhibits 2001 through 2005 in the Updated Exhibit List were never filed with or submitted to the Board and are therefore not part of the evidentiary record in this proceeding. Because these documents were never served on Pfizer or made of record before the Board, they cannot properly be considered evidence in this proceeding and are irrelevant for all purposes. *See* 37 C.F.R. 42.63(a), (e). Accordingly, Pfizer’s objections to Exhibits 2001 through 2005 below are directed to the documents originally filed with and cited in Patent Owner’s Discretionary Denial Brief (Paper 9).

Exhibit	Objections
Ex. 2001 – Declaration of Bruce D. Forrest in Support of Patent Owner’s Discretionary Denial Brief, dated March 5, 2026.	Federal Rules of Evidence (“FRE”) 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.

	FRE 602: The declarant lacks personal knowledge sufficient to support many of the specific financial, legal, and corporate assertions contained in the declaration, including itemized fees and expenditures attributable to third-party entities. FRE 802: To the extent the exhibit is offered to prove the truth of the matters asserted therein, it constitutes inadmissible hearsay. Right to Cross-Examine: Petitioner reserves the right to cross-examine the declarant under 37 CFR § 42.53. If Patent Owner does not make the declarant available for cross-examination, but seeks to rely on the exhibit in its post-institution briefing, Petitioner will move to exclude the exhibit.
Ex. 2002 – Liffey/Vax Executive Summary: Expanded Coverage Twenty-Valent Pneumococcal Conjugate Vaccine (ePCV20) Executive Summary, Liffey Biotech Ltd., July 8, 2018.	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay. FRE 901: Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. Patent Owner has not established when, where, and how the exhibit was published.

Ex. 2003 – Confidential Disclosure Agreement between Liffey Biotech Ltd. and Pfizer Inc., dated March 25, 2019.	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.
Ex. 2004 – International Patent Publication No. WO 2020/121159 A1 (PCT/IB2019/106562) titled “Immunogenic Multiple Hetero-Antigen Polysaccharide-Protein Conjugates and Uses Thereof,” published June 18, 2020.	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.
Ex. 2005 – Google Patents U.S. Patent No. 11,058,757.	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 901: Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. The exhibit is a printout from the Google Patents website, a third-party platform, rather than an official record obtained from

	the United States Patent and Trademark Office. Patent Owner has not established the accuracy, completeness, or reliability of the third-party reproduction, including whether the content faithfully reproduces the official patent document or when the printout was generated.
Ex. 2006 – Court’s Order, <i>Pogona, LLC v. Merck Sharp & Dohme LLC</i>, No. 2:25-cv-15294-BRM-JBC (D.N.J.), dated March 2, 2026.	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted. FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.
Ex. 2007 – Matanock, M.D., Almea, et al., <i>Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine Among Adults Aged ≥ 65 Years: Updated Recommendations of the Advisory Committee on Immunization Practices</i>, Morbidity and Mortality Weekly Report, Vol. 68 No. 46 (2019)	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because it post-dates the priority date of U.S. Patent No. 11,058,757 (“757 Patent”). FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay.
Ex. 2008 – Cynthia Whitney, M.D., MPH, Pneumococcal Vaccines for	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because it is an undated

Older Adults: What is the right approach?	presentation that, based on its content, post-dates the priority date of the '757 Patent. FRE 403: The exhibit's probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay. FRE 901: Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is. Patent Owner has not established when, where, and how the exhibit was published.
Ex. 2009 – Almea Matanock, M.D., <i>Invasive Pneumococcal Disease in the U.S. – 2008-2016</i>, National Center for Immunization & Respiratory Diseases, October 26, 2017	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because it post-dates the priority date of the '757 Patent. FRE 403: The exhibit's probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay. FRE 901: Patent Owner has not produced evidence sufficient to support a finding that the exhibit is what Patent Owner claims it is.

	Patent Owner has not established when, where, and how the exhibit was published.
Ex. 2010 – Decision on Appeal, <i>Ex parte Smith</i> , No. 2011-003337 (PTAB Feb. 28, 2012)	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because the PTAB decision concerns an unrelated patent application that bears no relevance to the subject matter of the '757 Patent or the instituted grounds. FRE 403: The exhibit's probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.
Ex. 2011 – Judgment, <i>Ex parte Smith</i> , No. 2012-001344 (Fed. Cir. Nov. 20, 2012)	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because the Federal Circuit Rule 36 judgment affirming the PTAB decision concerns an unrelated patent application that bears no relevance to the subject matter of the '757 Patent or the instituted grounds. FRE 403: The exhibit's probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.
Ex. 2012 – Decision on Appeal, <i>Ex Parte Eckhardt</i> , No. 2020-003463 (PTAB Apr. 15, 2021)	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because the PTAB decision concerns an unrelated patent application that bears no relevance to the

	subject matter of the '757 Patent or the instituted grounds. FRE 403: The exhibit's probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.
Ex. 2013 – Appellant's Appeal Brief, <i>Ex Parte Eckhardt</i>, No. 71049US008 (filed Nov. 4, 2019)	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because the exhibit is an appellant's appeal brief from patent prosecution of an unrelated patent application that bears no relevance to the subject matter of the '757 Patent or the instituted grounds. FRE 403: The exhibit's probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay. Attorney argument in a brief is not evidence of the facts asserted therein.
Ex. 2014 – Plaintiff-Appellant's [Corrected] Brief, <i>3Form, Inc. v. Lumicor, Inc.</i>, No. 2016-001535 (Fed. Cir. May 10, 2016)	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because the exhibit is an appellant's appeal brief from a Federal Circuit appeal concerning an unrelated patent that bears no relevance to the subject matter of the '757 Patent or the instituted grounds.

	FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay. Attorney argument in a brief is not evidence of the facts asserted therein.
Ex. 2015 – Santiesteban-Lores, et al., <i>Development of a pneumococcal conjugate vaccine based on chemical conjugation of polysaccharide serotype 6B to PspA</i>, <i>Microbial Pathogenesis</i> 158 (2021)	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted, including because it post-dates the priority date of the ’757 Patent. FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay.
Ex. 2016 – Declaration of Ali Fattom, Ph.D., dated Sept. 2017, submitted in <i>Merck Sharp & Dahme Corp. v. Wyeth LLC</i>, No. IPR2017-00390	FRE 401 and 402: The exhibit is not relevant to any ground upon which trial was instituted. The exhibit is an expert declaration submitted in a separate unrelated <i>inter partes</i> review involving different parties and a different patent. FRE 403: The exhibit’s probative value with respect to any ground upon which trial was instituted is substantially outweighed by the

	danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence. FRE 802: To the extent it is being offered to prove the truth of the matter asserted, the exhibit constitutes inadmissible hearsay. The declarant was not retained in this proceeding, has not been made available for cross-examination, and his opinions were directed to different claim limitations and different prior art.
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Dated: June 9, 2026

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2026, I caused a true and correct copy of the foregoing

- Petitioner Pfizer Inc.'s Objections to Patent Owner's Preliminary Evidence

to be served on Patent Owner by delivering a copy via electronic mail to the following individuals at the email address below:

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