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**Subject:** PGR2023-00017; Request to Withdraw Motion to Exclude (Paper 49)  
**Date:** Thursday, March 21, 2024 10:53:21 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

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To the Honorable Board,

Petitioner requests to withdraw one of its Motions to Exclude; specifically Paper 49 directed to Exhibits 2003-2010 and 2020. It is our understanding that Patent Owner does not object. Petitioner sends this email to provide the Board with enough information to resolve the issue.

We make this request to resolve issues raised by Patent Owner. On Tuesday evening PO informed us that they considered our other Motion to Exclude Certain Opinions of Jacobsen's Declaration (Paper 48) as improper for two reasons. First, they asserted that each party is limited to a single 15-page motion; and second, that Paper 48 contravenes the rule that "a motion to exclude is not a vehicle for addressing the weight to be given evidence—arguments regarding weight should appear only in the merits documents." 2019 Consolidated Trial Practice Guide, 79.

The next morning we replied informing them we disagreed with their analysis. We also pointed out that there was no rule limiting a party to a single motion for all objections and requested any authority they had on the issue. As for the issue of whether our other motion addressed the weight to be given evidence, we explained that our Paper 48 was properly directed to the admissibility of the identified Jacobsen opinions under the Federal Rules of Evidence as provided in *Daubert v. Merrill Dow Pharm., Inc.*, 509 U.S. 579 (1993).

Patent Owner then provided us with IPR2017-00573, Paper 77 at 2-3 (PTAB Sept. 17, 2018) as the relevant authority for a party being limited to one motion to exclude. We informed them that the case they provided is not precedential and not binding in this proceeding. We also noted there are other cases prior to and subsequent to IPR2017-00573 in which two motions to exclude were filed without issue.

However, in an effort to resolve issues, we informed Patent Owner that we were willing to withdraw one of our motions, specifically Paper 49, addressing Exhibits 2003-2010 and 2020.

Accordingly, we make this request to withdraw Paper 49, in our effort to follow through on our representation to Patent Owner.

Respectfully,

PGR2023-00017  
Ex. 3008

Toni Herbert

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Partner

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