

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CONJUPRO BIOTHERAPEUTICS, INC.,
Petitioner,

v.

ASCLETIS PHARMA CHINA CO. LTD.,
Patent Owner.

Case No. PGR2025-00057
Patent No. 12,234,236
Title: GLP-1R agonist and therapeutic method thereof

**PETITIONER'S REPLY IN SUPPORT OF CORRECTED MOTION
TO EXCLUDE EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(c)**

The information Mr. Gargiulo provides through Exhibits 2080 and 2081 is improper expert testimony, hearsay, lacking authentication, unfairly prejudicial, and violative of 37 C.F.R. § 42.65. Patent Owner's opposition confirms, rather than rebuts, the evidentiary deficiencies identified in Petitioner's Motion to Exclude.

I. ARGUMENT

a. Mr. Gargiulo Declaration Is Violative of FRE 701, 702 and 602.

Patent Owner admits that Mr. Gargiulo lacks scientific qualifications and claims instead he is a "fact witness" whose "testimony merely attests to the[] existence and results" of the tests. (Opp., 3.) This characterization is difficult to square with the record. Mr. Gargiulo does far more than merely attest to the existence of the records. He presents and contextualizes specific experimental results based on his claimed experience in "present[ing] the results of . . . preclinical and clinical studies for . . . drug candidates." (Dec. ¶ 3.) This goes beyond the scope of fact witness testimony and does not satisfy the requirements Federal Rules 701 and 702.

Even if Mr. Gargiulo were a mere fact witness, he would still be subject to Rule 602, which requires "that the witness has personal knowledge of the matter." Fed. R. Evid. 602. As set forth in Petitioner's Motion, Mr. Gargiulo wholesale lacks personal knowledge of the matters to which he attests. (MTE, 4–5.)

b. Neither Mr. Gargiulo's Testimony Nor the Exhibits Satisfy the Business Records Exception to the Rule Against Hearsay.

Exhibits 2080 and 2081 do not qualify as business records under Rule 803(6).

Exhibit 2080 is a declaration generated for this proceeding and therefore cannot be business records. *See Wi-LAN Inc. v. Sharp Elecs. Corp.*, 992 F.3d 1366, 1372 (Fed. Cir. 2021) (holding declarations created and prepared for litigation place them “outside the scope of the exception”). The lab notebook was created on March 4, 2026—*one day before* Patent Owner’s Response filing deadline, (Ex. 2081, 1), and thus also shows it was prepared for litigation, not routine business. Mr. Gargiulo also admits he did not review records that provided information in his report. (Ex. 1039 at 24:2-6, 119:25-121:3, 133:7-16, 157:8-158:20.) As to both exhibits, Mr. Gargiulo is not a “custodian or another qualified witness” under Rule 803(6); he lacks knowledge regarding the generation of the data, who performed the experiments, and what protocols were followed. (Ex. 1039 at 50:24-51:1; 92:3-14; 119:25-121:3.)

c. Neither Mr. Gargiulo’s Testimony Nor the Exhibits Satisfy the Residual Exception to the Rule Against Hearsay.

Patent Owner’s invocation of the residual exception under Rule 807 is unavailing. Rule 807 is a narrow exception reserved for evidence bearing circumstantial guarantees of trustworthiness equivalent to the enumerated exceptions—it is not a catch-all for evidence that fails other hearsay exceptions. Patent Owner does nothing to demonstrate intrinsic guarantees of trustworthiness in the exhibits. Further, Exhibit 2081 includes the “-3” version number in the notebook’s identification number (GLNB007230-3)—which suggests prior

iterations—and the complete absence of any audit trail, critically undermines trustworthiness. (*See* Ex. 1039 at 158:12-20, 159:15-163:12 (no awareness of how stored or access). Notably, Patent Owner’s opposition does not address the version-number issue at all. Evidence created for litigation purposes, without any business justification and with unexplained prior versions, cannot satisfy the trustworthiness requirements of Rule 807.

d. Patent Owner’s FRE 703 Arguments Do Not Cure the Deficiencies in the Exhibits.

Rule 703 permits an expert to *rely on* inadmissible data in forming opinions but only if experts in the field would “reasonably rely on those kinds of facts or data in forming an opinion on the subject.” Fed. R. Evid. 703. Patent Owner makes no effort to show that experts in pharmacology or medicinal chemistry would forgo review of actual test results and rely instead on a non-scientist’s secondhand account, prepared only for litigation, of what a scientist told him about what unnamed third-parties purportedly did. Moreover, contrary to Patent Owner’s characterizations, (Oppo. at 2, 5), there is nothing in Ex. 2080—which is what Wipf relied upon—describing that the data was generated using the same conditions/experiments or around the same time as the data in the ’236 Patent, much less who conducted the testing, when, or why, which all further calls into question Wipf’s reasonable reliance on the data. Exclusion of Wipf’s opinions and the exhibits is appropriate.

Further, any reliance by Wipf does not render the underlying evidence itself *admissible*. See *Wi-LAN Inc.*, 992 F.3d at 1372 (“Rule 703 does not make admissible otherwise inadmissible evidence”). The exhibits remain properly subject to exclusion. If the facts and data underlying Dr. Wipf’s opinions are inadmissible, they may be disclosed to the trier of fact “only if their probative value in helping the jury evaluate the opinion *substantially outweighs* their prejudicial effect.” Fed. R. Evid. 703. As Petitioner explains, the testing was done under unexplained and irrelevant conditions, (Mot. at 8; Ex. 1039 at 179:5-183:7), and Patent Owner has made no showing otherwise. Petitioner had no opportunity to examine the individuals who actually conducted the experiments, to review the full experimental protocols, or to verify the accuracy of the results.

e. Patent Owner Has Not Authenticated Exhibit 2081

Patent Owner argues that authentication is a “low bar,” but fails to demonstrate that even this minimal threshold has been met. Patent Owner’s opposition does not address the specific deficiencies identified in the Motion to Exclude: Gargiulo’s lack of knowledge about who performed the testing, where the notebook is stored, or whether other versions exist. (See MTE at 7-8.) These deficiencies remain unrebutted. *Shu-Hui Chen v. Bouchard*, 347 F.3d 1299, 1308 (Fed. Cir. 2003) (affirming exclusion of notebooks as hearsay when only “circular

testimony” was offered to authenticate and the author of the notebooks was not called to testify).

f. Patent Owner’s Prejudice Argument Improperly Shifts Burden.

Patent Owner’s argument that Petitioner “chose not to” pursue additional discovery misallocates the burden. It is Patent Owner’s burden to offer admissible evidence—not Petitioner’s burden to rehabilitate inadmissible evidence through discovery. Patent Owner could have offered testimony from Bin Liang, who is a named inventor on the ’236 Patent and who purportedly conducted or oversaw the testing, but chose not to. That choice has consequences under the Federal Rules of Evidence. Accordingly, Exhibits 2080-2081 and Wipf’s testimony thereon should be excluded from evidence.

Petitioner does not concede any arguments for why all exhibits identified in its motion should be excluded and contends Patent Owner’s arguments lack merit.

II. CONCLUSION

For the reasons stated in Petitioner’s moving memorandum, the Board should exclude the above as well as exhibits and testimony not cited or relied upon by Patent Owner and therefore irrelevant and prejudicial (MTE at 9–10), the general review articles cited by Patent Owner as irrelevant (*id.* at 12–13). and Exhibit 2042 as hearsay (*id.* at 13–14.) In addition, portions of Exhibit 2079 which offer opinions beyond Dr. Wipf’s qualifications should be excluded. (*Id.* at 10–12.)

Dated: August 24, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), I hereby certify that on August 24, 2026, I caused a true and correct copy of the foregoing **Petitioner's Reply in Support of Corrected Motion to Exclude Evidence Pursuant to 37 C.F.R. § 42.64(c)** to be served by electronic mail, as authorized by Patent Owner, at the following email addresses:

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