

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHIGENIX, INC.

Petitioner

v.

IMMUNOGEN, INC.

Patent Owner

CASE IPR2014-00676

U.S. Patent No. 8,337,856

DECLARATION OF JOSEPH MORRIS

I, Joseph Morris, declare as follows:

1. My name is Joseph Morris. I reside in San Francisco, California.
2. I am employed by Genentech, Inc. (“Genentech”), located at 1 DNA Way, South San Francisco, CA 94080. I am over 18 years of age, and I make this declaration based on my own knowledge, personal experience, and my duties within the ordinary course of business at Genentech. If called upon, I can competently testify to the facts stated in this declaration.
3. I am currently employed by Genentech as a Senior Litigation Analyst. I have been employed by Genentech since May 2012. In my position, I am knowledgeable as to Genentech’s regular business practices concerning recordkeeping for Genentech’s promotional and marketing materials. Genentech’s regular business practice is and was to retain copies of its literature, documentation, press releases, marketing materials, product packaging, and media for its pharmaceutical products, including Kadcyła®.
4. I am also knowledgeable as to Genentech’s regular business practices concerning recordkeeping for Genentech’s financial documents and information, and Genentech’s contracts with third parties. Genentech maintains financial documents and information in a financial database. Genentech maintains copies of contracts in a contracts database.

5. I searched Genentech's Kadcyła® files, and confirmed that the below-discussed exhibits are true and correct copies of documents and reports from Genentech's files. These documents have been kept in the normal course of Genentech's business, in accordance with Genentech's policies. Based on my personal knowledge and experience as a Genentech employee, as well as my knowledge of Genentech's document-retention policies and procedures, I can testify competently as to the authenticity of these documents.

Promotional Materials

6. Exhibits 2127, 2204, 2226-2238, 2318, 2325, 2334-2335, and 2340-2341 are all promotional materials related to the drug Kadcyła® that I found and collected from Genentech's Global Product Regulatory System, a database that Genentech uses routinely to store materials relating to its products, including marketing materials.

7. Exhibit 2204 [HPK0001792100] is a true and correct copy of Genentech presentation titled "Treatment Options for HER2+ Metastatic Breast Cancer: A Back-to-Back Presentation of PERJETA and KADCYLA" with a copyright date of 2013.

8. Exhibit 2226 [TDM0002117400] is a true and correct copy of a mobile advertisement regarding Kadcyła®'s important safety information for healthcare professionals with a copyright date of 2013.

9. Exhibit 2227 [TDM0002117402] is a true and correct copy of a mobile advertisement titled “Multiple antitumor activities from a single agent” with a copyright date of 2013.

10. Exhibit 2228 [TDM0002264501] is a true and correct copy of Kadcyła®’s website titled “The first antibody-drug conjugate for the treatment of HER2-positive [HER2+] metastatic breast cancer [MBC]” with a copyright date of 2014.

11. Exhibit 2127 [TDM0001493600] is a true and correct copy of marketing material titled “EMILIA: A Phase III trial establishing the efficacy and safety of KADCYLA for the treatment of HER2+ metastatic breast cancer in patients who have previously received trastuzumab and a taxane” with a copyright date of 2013.

12. Exhibit 2234 [TDM0001957100] is a true and correct copy of a brand alert titled “KADCYLA® (ado-trastuzumab emtansine) was designed to maintain the HER2 suppression and anticancer activities of trastuzumab and to provide the cytotoxic strength of DM1” with a copyright date of 2013.

13. Exhibit 2229 [TDM0002134300] is a true and correct copy of a Kadcyła® flyer titled “The first antibody-drug conjugate for HER2-positive metastatic breast cancer” with a copyright date of 2013.

14. Exhibit 2230 [TDM0002133900] is a true and correct copy of a Kadcyła® flyer titled “The first antibody-drug conjugate for HER2-positive metastatic breast cancer” with a copyright date of 2013.

15. Exhibit 2231 [TDM0002153400] is a true and correct copy of a Kadcyła® presentation titled “Hybrid in Motion” with a copyright date of 2013.

16. Exhibit 2232 [TDM0002652600] is a true and correct copy of a brochure titled “KADCYLA: A different kind of treatment for HER2-positive metastatic breast cancer has emerged” with a copyright date of 2014.

17. Exhibit 2238 [TDM0001464301] is a true and correct copy of a Kadcyła® FAQ script for inbound calls for Kadcyła®’s support line.

18. Exhibit 2325 [TDM0001305700] is a true and correct copy of a Kadcyła® promotional material titled “KADCYLA is the first FDA-approved antibody drug conjugate (ADC) for HER2-positive metastatic breast cancer” with a copyright date of 2013.

19. Exhibit 2233 [TDM0002154500] is a true and correct copy of a Kadcyła® website banner.

20. Exhibit 2340 [TDM0002373400] is a true and correct copy of a Kadcyła® script email titled “Survival data in HER2+ MBC by ER/PR status,” which is dated March 10, 2014. The material accompanying the email has a copyright date of 2014.

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