

EXHIBIT D

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHIGENIX, INC.
Petitioner

v.

IMMUNOGEN, INC.
Patent Owner

Case IPR2014-00676
Patent 8,337,856 B2

**PHIGENIX, INC.'S OBJECTIONS TO NEW EVIDENCE PRODUCED BY
IMMUNOGEN, INC. ON FEBRUARY 12, 2015**

Petitioner Phigenix, Inc. (“Phigenix”) objects under Federal Rules of Evidence (“FRE”) and 37 C.F.R. § 42.64(b)(1) to the admissibility of the new evidence designated Protective Order Materials (“Challenged Materials”), served by Patent Owner ImmunoGen, Inc. (“ImmunoGen”) on February 12, 2015, with its ImmunoGen, Inc.’s Supplemental Evidence under 37 C.F.R. § 42.64(b)(2). Phigenix serves ImmunoGen with these objections to provide notice to ImmunoGen that Phigenix may move to exclude the Challenged Materials under 37 C.F.R. § 42.64(c), or if deemed appropriate request that the Board grant leave to file a motion to strike inadmissible evidence, unless ImmunoGen cures the defects of the Challenged Materials identified herein.

I. Identification of Challenged Materials and Grounds for Objections

1) Protective Order Material - Supp. Evidence - IMS pt. 1

“Protective Order Material - Supp. Evidence - IMS pt. 1” purports to be a photocopy of a chart of data related to a variety of commercial pharmaceuticals. There is no indication of the origin or creator of the chart or the data. No foundation is provided for the reliance on this data. The Declaration of John C. Jarosz signed February 10, 2015, makes no reference to this chart of data. Phigenix

objects to this chart of data since it does not appear to be a “duplicate” as defined by FRE 1001(e) insofar as the chart is not “a copy . . . which accurately reproduces the original.” Thus, under FRE 1003, the chart is inadmissible because it is not a “duplicate.” Phigenix objects that this chart of data is inadmissible as hearsay under FRE 802. In addition, this chart is inadmissible because it is not qualified to be the basis for an expert opinion under FRE 703. This chart is also inadmissible under FRE 401/402 because it lacks relevance and probative value.

In addition, Phigenix objects that this new evidence produced on February 12, 2012 has not been produced in accordance with 37 C.F.R. § 42.63. Phigenix further objects that the new evidence should have been served with the Patent Owner Response and therefore is inadmissible due to its late production which has prejudiced the ability of Phigenix to formulate a response. Phigenix reserves the right to file a motion to strike the new evidence as inadmissible at an appropriate time.

2) Protective Order Material - Supp. Evidence - IMS pt. 2

“Protective Order Material - Supp. Evidence - IMS pt. 2” purports to be a photocopy of a chart of data related to a variety of commercial pharmaceuticals. There is no indication of the origin or creator of the chart or the data. No foundation is provided for the reliance on this data. The Declaration of John C.

Jarosz signed February 10, 2015, makes no reference to this chart of data. Phigenix objects to this chart of data since it does not appear to be a “duplicate” as defined by FRE 1001(e) insofar as the chart is not “a copy . . . which accurately reproduces the original.” Thus, under FRE 1003, the chart is inadmissible because it is not a “duplicate.” Phigenix objects that this chart of data is inadmissible as hearsay under FRE 802. In addition, this chart is inadmissible because it is not qualified to be the basis for an expert opinion under FRE 703. This chart is also inadmissible under FRE 401/402 because it lacks relevance and probative value.

In addition, Phigenix objects that this new evidence produced on February 12, 2012 has not been produced in accordance with 37 C.F.R. § 42.63. Phigenix further objects that the new evidence should have been served with the Patent Owner Response and therefore is inadmissible due to its late production which has prejudiced the ability of Phigenix to formulate a response. Phigenix reserves the right to file a motion to strike the new evidence as inadmissible at an appropriate time.

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