

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 REPLY TO IMMUNOGEN, INC.'S OPPOSITION TO
THE MOTION TO EXCLUDE
UNDER 37 C.F.R. § 42.64(c)**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Patent Owner ImmunoGen, Inc.'s ("ImmunoGen") filing of Exhibits 2347 and 2348 ("the Belated Exhibits") on June 18, 2015 does not cure ImmunoGen's failure to authenticate the Belated Exhibits.

ImmunoGen's Opposition does not dispute the following facts:

(1) the Belated Exhibits filed June 18, 2015 do not show any internal markers indicating their alleged origin as "IMS" data or market reports from "IMS";

(2) ImmunoGen's Certificate of Service served with its Supplemental Evidence on February 12, 2015 (Ex. 1039) does not identify the "confidential supplemental evidence" produced on that date as "IMS" data;

(3) the Supplemental Declaration of John C. Jarosz ("the Supplemental Declaration"), dated February 10, 2015, and served on February 12, 2015 (Ex. 1040) does not reference or identify the "confidential supplemental evidence" produced on February 12, 2015 as "IMS" data or as market reports from "IMS."

Accordingly, ImmunoGen has failed to provide any authentication of the Belated Exhibits as data or market reports originating from "IMS."

In fact, paragraph 6 of the Supplemental Declaration admits that Exhibits 2240-2244, 2256, 2319, and 2320 are “compilations of data.” Therefore, none of Exhibits 2240-2244, 2256, 2319, and 2320 are original to “IMS,” and do not constitute market reports produced by “IMS.” Although the Supplemental Declaration refers to “[d]ata from IMS” it does not reference or identify the contents of the Belated Exhibits as “IMS” data. Consequently, there has been no authentication of the Belated Exhibits as “IMS” data by John C. Jarosz, the witness purportedly relying on such data.

Under F.R.E. 901(b)(1) testimony of a witness with knowledge is sufficient to satisfy the requirement that an item is what it is claimed to be. Yet ImmunoGen has conspicuously failed to provide any such statement from John C. Jarosz that the data contained in the Belated Exhibits originates from “IMS” or constitutes market reports by “IMS.”

The Belated Exhibits remain unauthenticated as original materials sourced from “IMS.” Under F.R.E. 1006 the proponent of a summary or chart “must make the originals or duplicates available.” Furthermore, under F.R.E. 1002 “[a]n original writing, recording, or photograph is required in order to prove its content.” As matters stand, the Belated Exhibits fail on both counts. In addition, since the

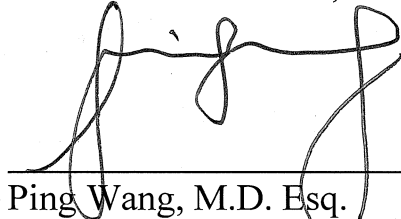
Belated Exhibits are unauthenticated as market reports, no hearsay exception can apply to evidence relying on the Belated Exhibits.

Accordingly, for the reasons stated above and in the Motion to Exclude, Phigenix respectfully requests that the Board exclude the Belated Exhibits (Exhibits 2347 and 2348), Exhibits 2240, 2241, 2242, 2243, 2244, 2256, 2319 and 2320, and paragraphs 12, 14, 44, 45, 46, 55, 56, 57, 58, 107 of the Jarosz Declaration (Exhibit 2131) from evidence.

Date: June 25, 2015

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

The undersigned hereby certifies that the above-captioned "Phigenix Inc.'s
Reply to ImmunoGen, Inc.'s Opposition to The Motion to Exclude Under 37
C.F.R. § 42.64(c)" was served via electronic mail upon the following parties:

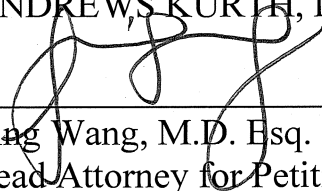
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