

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BIOGEN MA INC.  
Junior Party  
Patent 8,399,514 B2,

v.

FORWARD PHARMA A/S  
Senior Party  
Application 11/576,871.

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Patent Interference No. 106,023 (McK)  
Technology Center 1600

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Before: FRED E. McKELVEY, SALLY GARDNER LANE, and  
DEBORAH KATZ, *Administrative Patent Judges*.

FRED E. McKELVEY, *Administrative Patent Judge*.

**DECISION ON FORWARD PHARMA MOTION 2**

37 C.F.R. § 41.125(a)

- 1 Forward Pharma Motion 2 (Paper 163) seeks entry of an order vacating
- 2 benefit for the purpose of priority (i.e., an earlier constructive reduction to practice)

1 awarded to Biogen when the interference was declared (Paper 1, page 6) as to  
2 Biogen Provisional Application 60/888,921, filed 8 February 2007 (**Ex. 2006A**).

3 The basis for the motion is that Biogen failed to amend its U.S. Application  
4 12/526,296, filed 13 January 2011 (**Ex. 2004A**) to contain a specific reference to  
5 the Biogen Provisional application.

6 Without an amendment, Biogen is not entitled to an earlier constructive  
7 reduction to practice based on its Provisional Application.

8 Biogen attempted to amend its U.S. Application 12/526,296. Biogen  
9 Motion 5 (Paper 94).

10 Biogen Motion 5 has been denied. Paper 177.

11 Our decision denying Biogen Motion 5 resolves the same issue raised in  
12 Forward Pharma Motion 2.

13 Because our decision on Biogen Motion 5 grants Forward Pharma the relief  
14 it seeks in Forward Pharma Motion 2, and Biogen had a full and fair opportunity to  
15 address the relief sought by Forward Pharma Motion 2 in presenting Biogen  
16 Motion 5, the issue raised in Forward Pharma Motion 2 has become moot.

17 ORDERED, for the reasons given above, Forward Pharma Motion 2 is  
18 *dismissed* as moot without prejudice to being renewed should future circumstances  
19 dictate a need to decide Forward Pharma Motion 2.

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