

Filed on behalf of Patent Owner Genentech, Inc. by:

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UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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CELLTRION, INC.,  
Petitioner,

v.

GENENTECH, INC.,  
Patent Owner.

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Case IPR2017-01373  
U.S. Patent No. 6,407,213

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**PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE  
PURSUANT TO 37 C.F.R. § 42.64**

Patent Owner has moved to strike Exhibit 1193 and the associated arguments and testimony that rely on this exhibit, including the first full paragraph of pages 15 and 21 of Petitioner's Reply (Paper 54), Ex. 1143 ¶30, and Ex. 1138 at 176:25 to 178:23. As explained in Patent Owner's contemporaneously filed Motion to Strike, this evidence and argument is new and improper. To the extent the Board agrees, it should also exclude these new arguments and evidence under Federal Rules of Evidence 401 and 402 because they are not relevant to any of the instituted grounds, for which Petitioner was obligated to identify all of the supporting evidence with particularity in the Petition. *See* 35 U.S.C. § 312(a); *see also* 37 C.F.R. § 42.23(b). Moreover, because Patent Owner has been denied any meaningful opportunity to substantively respond to Petitioner's positions, any alleged relevance is substantially outweighed by unfair prejudice to Patent Owner, and the evidence and argument should be excluded under Federal Rule of Evidence 403.<sup>1</sup>

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<sup>1</sup> Among other grounds, Patent Owner objected to Ex. 1193 as improper new evidence and irrelevant and misleading under Fed. R. Evid. 401, 402, 403 and 37 C.F.R. § 42.23(b). (Paper 55 at 2.) Patent Owner objected to Ex. 1143 ¶30 as improper for raising new arguments in reply, and under Fed. R. Evid. 702, 703, 705, 403; 77 Fed. Reg. at 48,763; 37 C.F.R. § 42.65, and as being misleading

Respectfully submitted,

Date: June 22, 2018

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and/or confusing under Fed. R. Evid. 403. (*Id.* at 7). Patent Owner objected to Ex. 1138 as containing testimony elicited from questions outside the scope of the witness's direct testimony, and as being misleading, confusing, unfairly prejudicial, and irrelevant under Fed. R. Evid. 401, 402, 403. (*Id.* at 4; Ex. 1138 at 177:4-6 (objecting to questions pertaining to Ex. 1193).)