

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

David L. Cavanaugh (Reg. No. 36,476)  
Lauren V. Blakely (Reg. No. 70,247)  
Robert J. Gunther, Jr. (*Pro Hac Vice*)  
Lisa J. Pirozzolo (*Pro Hac Vice*)  
Kevin S. Prussia (*Pro Hac Vice*)  
Andrew J. Danford (*Pro Hac Vice*)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
1875 Pennsylvania Ave., NW  
Washington, DC 20006

Adam R. Brausa (Reg No. 60,287)  
Daralyn J. Durie (*Pro Hac Vice*)  
DURIE TANGRI LLP  
217 Leidesdorff Street  
San Francisco, CA 94111

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 IPR2017-01374  
U.S. Patent No. 6,407,213

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**PATENT OWNER'S REPLY IN SUPPORT OF ITS  
MOTION TO EXCLUDE EVIDENCE**

The Board should exclude Exhibit 1193 and the associated arguments and testimony that rely on this exhibit, including the first full paragraph of page 18 of Petitioner's Reply (Paper 53); Ex. 1143 ¶30, and Ex. 1138 at 176:25 to 178:23. This evidence was newly introduced in reply and is an improper attempt to present a new theory of unpatentability not disclosed in the Petition and are therefore not relevant to the instituted grounds. (See Paper 58; Paper 60. As the Board recently explained, "Federal Circuit case law indicates that a motion to exclude is a proper vehicle for enforcing our rule and trial practice guide regarding the scope of evidence that may be submitted with a reply brief." *Dexcom, Inc. v. Waveform Techs, Inc.*, IPR2016-01679, Paper 53 at 50-51 (Feb. 28, 2018); see also *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1081 (Fed. Cir. 2015) ("a party may move to exclude evidence ... as improper under the response-only regulation, under the Trial Practice Guide's advice"); *Genzyme Therapeutic Prods. L.P. v. Biomarin Pharm. Inc.*, 825 F.3d 1360, 1368 (Fed. Cir. 2016) (if Patent Owner "had wanted the Board to disregard those references, it could have filed a motion to exclude them," citing, e.g., 37 C.F.R. § 42.64(c)); *Intelligent Bio-Systems, Inc. v. Illumina Cambridge, Ltd.*, 821 F.3d 1359 (Fed. Cir. 2016) (not error for the Board to exclude petitioner's new theory of invalidity supported by new evidence not relied upon in the petition).

Exhibit 1193 is thus *per se* irrelevant under Federal Rule of Evidence 401 because it is untimely and in violation of the Board's rules and its governing statute. 35 U.S.C. § 312(a); 37 C.F.R. § 42.23(b). Any relevance is greatly outweighed by the unfair prejudice to Patent Owner because Patent Owner has been denied any meaningful opportunity to substantively respond to Petitioner's positions. As a result, the Board should exclude Exhibit 1193 and the associated arguments and testimony that rely on this exhibit.

Respectfully Submitted,

July 10, 2018

By: /David L. Cavanaugh/

David L. Cavanaugh  
Reg. No. 36,476  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
202-663-6025

**CERTIFICATE OF SERVICE**

I hereby certify that, on July 10, 2018, I caused a true and correct copy of the following materials:

- Patent Owner's reply in Support of its Motion to Exclude

to be served via electronic mail on the following attorneys of record:

Cynthia Lambert Hardman  
GOODWIN PROCTER LLP  
[chardman@goodwinlaw.com](mailto:chardman@goodwinlaw.com)  
620 Eighth Avenue, New York, NY 10018

Robert V. Cerwinski  
GOODWIN PROCTER LLP  
[rcerwinski@goodwinlaw.com](mailto:rcerwinski@goodwinlaw.com)  
620 Eighth Avenue, New York, NY 10018

Elizabeth Holland  
GOODWIN PROCTER LLP  
[eholland@goodwinlaw.com](mailto:eholland@goodwinlaw.com)  
620 Eighth Avenue, New York, NY 10018

Linnea P. Cipriano  
GOODWIN PROCTER LLP  
[lcipriano@goodwinlaw.com](mailto:lcipriano@goodwinlaw.com)  
620 Eighth Avenue, New York, NY 10018

Sarah J. Fischer  
GOODWIN PROCTER LLP  
[sfischer@goodwinlaw.com](mailto:sfischer@goodwinlaw.com)  
100 Northern Avenue, Boston, MA 02110

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/Lauren V. Blakely/

Lauren V. Blakely

Reg. No. 70,247

Wilmer Cutler Pickering Hale & Dorr LLP

950 Page Mill Road

Palo Alto, CA 94304

(650) 600-5039