

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

Moderna Therapeutics, Inc.

Petitioner

v.

Protiva Biotherapeutics, Inc.

Patent Owner

---

Case No. IPR2018-00739

U.S. Patent No. 9,364,435

---

**PETITIONER'S OBJECTIONS TO EVIDENCE SUBMITTED IN PATENT  
OWNER'S SUR-REPLY PURSUANT TO 37 C.F.R. § 42.64(b)**

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Moderna Therapeutics, Inc. (“Moderna” or “Petitioner”), submits the following objections to evidence accompanying the Patent Owner’s Sur-Reply. Petitioner’s objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed within five (5) business days of service of the Patent Owner’s Sur-Reply.

Petitioner reserves the right to present further objections to these or additional Exhibits submitted by Patent Owner, as allowed by the applicable rules or other authority.

Evidence	Description	Objection(s)
<b>Exhibit 2046</b>	Alleged “Listing of Example Formulations Falling within the Scope of the ’435 Patent Claims”	<p><b>FRE 401, 402, 403</b> – Petitioner objects to the Exhibit as containing mere attorney argument without a sponsoring expert witness and mischaracterizations of the cited patents and cited art. Accordingly, the document is not relevant to any issue in the proceeding and/or any probative value is substantially outweighed by the danger of unfair prejudice.</p> <p><b>FRE 701, 702, 703</b> – Petitioner objects to the Exhibit including the title and the titles of the columns of this Exhibit as containing without a sponsoring expert witness and mischaracterizations of the cited patents and cited art which are not based on sufficient facts or data and are not based on a reliable foundation, and/or constitute conclusory opinion without sufficient support. <i>See also Daubert v. Merrell Dow Pharms, Inc.,</i></p>

		<p>509 U.S. 579 (1993). Moreover, Petitioner objects to this Exhibit as improper opinion testimony by a lay witness (<b>FRE 701</b>) and Petitioner objects to this Exhibit to the extent it is being offered as opinion testimony (<b>FRE 702</b>). An unknown author of the chart does not qualify as an expert in patent law by knowledge, skill, experience, training or education.</p> <p><b>FRE 801/802</b> –Petitioner objects to this Exhibit as inadmissible hearsay to the extent Patent Owner relies on it for the truth of the matter asserted therein.</p>
<b>Exhibit 2047</b>	WO 2010/088537	<p><b>FRE 401, 402, 403</b> – Petitioner objects to the entry of EX2047 as untimely. Further, this Exhibit is offered in support of mere attorney argument without a sponsoring expert witness that mischaracterizes the cited reference. As a result, this reference is not relevant to this proceeding.</p> <p>To the extent this exhibit is deemed relevant, admission of the exhibit would be unduly prejudicial given its untimeliness and lack of supporting expert testimony.</p>
<b>Exhibit 2048</b>	Sedic 2017 Article	<p><b>FRE 401, 402, 403</b> – Petitioner objects to the entry of EX2048 as untimely. Further, this Exhibit is offered in support of mere attorney argument without a sponsoring expert witness that mischaracterizes the cited reference. As a result, this reference is not relevant to this proceeding.</p>

		<p>To the extent this exhibit is deemed relevant, admission of the exhibit would be unduly prejudicial given its untimeliness and lack of supporting expert testimony.</p> <p><b>FRE 801/802</b> –Petitioner objects to this Exhibit as inadmissible hearsay to the extent Patent Owner relies on it for the truth of the matter asserted therein.</p>
<b>Exhibit 2049</b>	WO 2013/090648	<p><b>FRE 401, 402, 403</b> – Petitioner objects to the entry of EX2049 as untimely. Further, this Exhibit is offered in support of mere attorney argument without a sponsoring expert witness that mischaracterizes the cited reference. As a result, this reference is not relevant to this proceeding.</p> <p>To the extent this exhibit is deemed relevant, admission of the exhibit would be unduly prejudicial given its untimeliness and lack of supporting expert testimony.</p>
<b>Exhibit 2050</b>	Bahl 2017 Article	<p><b>FRE 401, 402, 403</b> – Petitioner objects to the entry of EX2050 as untimely. Further, this Exhibit is offered in support of mere attorney argument without a sponsoring expert witness that mischaracterizes the cited reference. As a result, this reference is not relevant to this proceeding.</p> <p>To the extent this exhibit is deemed relevant, admission of the exhibit would be unduly prejudicial given its untimeliness and lack of supporting expert testimony.</p>

		<p><b>FRE 801/802</b> –Petitioner objects to this Exhibit as inadmissible hearsay to the extent Patent Owner relies on it for the truth of the matter asserted therein.</p>
<b>Exhibit 2051</b>	WO 2017/223135	<p><b>FRE 401, 402, 403</b> – Petitioner objects to the entry of EX2051 as untimely. Further, this Exhibit is offered in support of mere attorney argument without a sponsoring expert witness that mischaracterizes the cited reference. As a result, this reference is not relevant to this proceeding.</p> <p>To the extent this exhibit is deemed relevant, admission of the exhibit would be unduly prejudicial given its untimeliness and lack of supporting expert testimony.</p>
<b>Exhibit 2052</b>	WO 2018/232357	<p><b>FRE 401, 402, 403</b> – Petitioner objects to the entry of EX2047 as untimely. Further, this Exhibit is offered in support of mere attorney argument without a sponsoring expert witness that mischaracterizes the cited reference. As a result, this reference is not relevant to this proceeding.</p> <p>To the extent this exhibit is deemed relevant, admission of the exhibit would be unduly prejudicial given its untimeliness and lack of supporting expert testimony.</p>

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.