

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MODERNA THERAPEUTICS, INC.,
Petitioner,

v.

PROTIVA BIOTHERAPEUTICS, INC.,
Patent Owner.

Case IPR2018-00680 (Patent 9,404,127)
Case IPR2018-00739 (Patent 9,364,435)

Record of Oral Hearing
Held: June 6, 2019

Before SHERIDAN K. SNEDDEN, SUSAN L.C. MITCHELL, and
RICHARD J. SMITH, *Administrative Patent Judges*.

IPR2018-00680 (Patent 9,404,127)

IPR2018-00739 (Patent 9,364,435)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Thursday, June 6, 2019, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

IPR2018-00680 (Patent 9,404,127)

IPR2018-00739 (Patent 9,364,435)

1 PROCEEDINGS

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3 (Proceedings begin at 1:00 p.m.)

4 JUDGE MITCHELL: Thank you. You may be seated.

5 Sorry.

6 Good afternoon, everyone. We have a final hearing
7 this afternoon in two cases, IPR 2018-00739 and IPR 2018-
8 00680. I'm Judge Mitchell and seated to my left is Judge
9 Snedden, and with us by video conference is Judge Smith, who
10 should be here. Is Judge Smith on?

11 JUDGE SNEDDEN: Uh-huh.

12 JUDGE SMITH: Uh-huh.

13 JUDGE MITCHELL: Oh, great. Sorry.

14 JUDGE SMITH: Hello.

15 JUDGE MITCHELL: Great, thank you.

16 I would like to get appearances for the parties on
17 the record, and if we could start with the Petitioner.

18 MR. FLEMING: Good afternoon, Your Honor. I'm Mike
19 Fleming with Irell & Manella, and with me is Morgan Chu, as
20 well as Maclain Wells.

21 JUDGE MITCHELL: Great.

22 MR. FLEMING: And we all three will be arguing.

23 JUDGE MITCHELL: Great. Thank you.

24 MR. CHU: Good afternoon.

25 JUDGE MITCHELL: Good afternoon. And for Patent
26 Owner, please.

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1 MR. ROSATO: Good afternoon, Your Honor. Mike
2 Rosato on behalf of Patent Owner. I have with me for the
3 counsel table Sonja Genrard, as well as Franklin Chu. Thank
4 you.

5 JUDGE MITCHELL: Thank you.

6 Let me get a quick clarification from both of you-
7 all, because as I understood from your requests for oral
8 hearing, I think Patent Owner requested the two cases be
9 separate, which is fine. It's just we could do the 739 first,
10 adjourn for a short bit, and come back and do the 680, and
11 have one record that gets submitted for both cases, so that
12 you can rely on -- you know, if claim construction issues are
13 similar, you're going to want to have that discussion in both
14 cases. So I want to make sure I understood right or if you
15 really do want separate transcripts.

16 Petitioner?

17 MR. FLEMING: Your Honor, we have prepared for
18 having separate hearings.

19 JUDGE MITCHELL: Okay.

20 MR. FLEMING: Because I will be arguing the 739
21 and --

22 MR. CHU: All right. The way we're going to proceed
23 is Mr. Fleming and I will argue '435.

24 JUDGE MITCHELL: Okay.

25 MR. CHU: And Mr. Wells will argue the '127 Patent,
26 referring to the patent numbers, but having a single unified

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1 transcript as constituting the official record --

2 JUDGE MITCHELL: For both cases.

3 MR. CHU: For both cases makes sense.

4 JUDGE MITCHELL: Okay. And -- and Patent Owner?

5 MR. ROSATO: We have no objection to this

6 suggestion, You Honor. I mean --

7 JUDGE MITCHELL: Okay. Okay. So we will go forward

8 with the '739. We'll take a short break and then come back on

9 but have one complete record for both cases.

10 We set forth our procedure for how we're going to

11 handle this oral hearing in our order, but I want to go over a

12 couple of things as a reminder.

13 Each party will first present argument in the '739

14 case, and each party will have an hour for that case, and then

15 we will have a second hearing for the '680 case, and that

16 case, there's a 40, 45 minutes per side of total time.

17 And to assist Judge Smith in following along with

18 your argument and for the clarity of the record, it is very

19 important that you refer to an exhibit. When you refer to an

20 exhibit, that you state the exhibit number and the page number

21 to which you are referring, and when you're referring to a

22 demonstrative, that you state the slide number.

23 Petitioner has the burden of showing the

24 unpatentability of the challenge claims in both cases, so the

25 Petitioner will go first. The Patent Owner will then have an

26 opportunity to present its response and may reserve a small

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