

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 MODERNA THERAPEUTICS, INC.,)
) Case No. IPR2018-00680
 5 Petitioner,) Case No. IPR2018-00739
) Patent No. 9,404,127
 6 v.) Patent No. 9,364,435
)
 7 PROTIVA BIOTHERAPEUTICS,)
 INC.,)
 8)
) Patent Owner.
 9)

11 TELEPHONIC VERBATIM REPORT OF PROCEEDINGS
 October 2, 2018
 12 Seattle, Washington

22 Job Number: 148826

23 Taken Before:

24 Laura A. Gjuka, CCR #2057
 25 Certified Shorthand Reporter

A P P E A R A N C E S

For the Petitioner:

MICHAEL FLEMING, ESQ. (By Phone)

MACLAIN WELLS, ESQ. (By Phone)

Irell & Manella

1800 Avenue of the Stars

Los Angeles, CA 90067

For the Patent Owner:

MICHAEL ROSATO, ESQ.

SONJA GERRARD, ESQ.

Wilson Sonsini Goodrich & Rosati

701 Fifth Avenue

Seattle, WA 98104

Also Present:

RICHARD J. SMITH (By Phone)

PROCEEDINGS

1
2 BE IT REMEMBERED that on the 2nd of October,
3 2018, 11:00 a.m., at 701 Fifth Avenue, Seattle,
4 Washington, before LAURA A. GJUKA, CCR# 2057, Washington
5 State Certified Court Reporter residing at University
6 Place, authorized to administer oaths and affirmations
7 pursuant to RCW 5.28.010.

8 WHEREUPON the following proceedings were had,
9 to wit:

10 * * * * *

11
12 APJ SMITH: Is there a court reporter?

13 MR. ROSATO: Hi, this is Mike Rosato that
14 just joined on behalf of patent owner.

15 APJ SMITH: Okay. My question was: Do we
16 have a court reporter?

17 MR. ROSATO: We do. Who is on the line
18 right now?

19 APJ SMITH: Well, let's start with the
20 introductions. I just wanted to confirm that we have a
21 court reporter first.

22 So, Petitioner, please introduce yourself and all
23 persons that are with you.

24 MR. FLEMING: Yes, Your Honor. This is
25 Mike Fleming. I represent the Petitioner. I don't

PROCEEDINGS

1
2 believe there is anybody else on with me.

3 MR. WELLS: Mike, it's Maclain Wells. I
4 am on the line as well.

5 MR. FLEMING: Okay, great.

6 APJ SMITH: Okay. Patent owner
7 introductions.

8 MR. ROSATO: Good afternoon, Your Honor.
9 This is Mike Rosato on behalf of patent owner, and I
10 have with me Sonja Gerrard and, as I stated, a court
11 reporter, and apologies if I wasn't recognizing voices
12 there.

13 APJ SMITH: Oh, that's fine.

14 So just a few matters first, and then I'll open it
15 up to the parties for any questions or issues that they
16 would like to raise.

17 I'm assuming that all parties are familiar with or
18 are aware of the August trial practice guide update and
19 also a recent update to the SOP 1 and 2?

20 MR. FLEMING: Your Honor, this is
21 Petitioner, and we are very well aware of those changes.

22 APJ SMITH: Okay.

23 MR. ROSATO: Yes, Your Honor. We are
24 aware of those as well.

25 APJ SMITH: Okay. Next question: Have

PROCEEDINGS

1
2 there been any settlement discussions between the
3 parties?

4 MR. ROSATO: Not that I'm aware of,
5 Your Honor. This is Mike Rosato.

6 APJ SMITH: Okay. So I'll open it up to
7 the parties. I'll ask the petitioner first whether you
8 have any procedural questions, changes to the scheduling
9 order, or any other matter that you would like to raise
10 at this time?

11 MR. FLEMING: Your Honor, we don't have
12 any proposed changes to the schedule or have any
13 questions, although we do reserve to do so in this -- in
14 the future if it comes a time to arise. And of course
15 we will follow the procedures that call for a conference
16 call before doing so.

17 APJ SMITH: Okay. Patent owner.

18 MR. ROSATO: No specific motions. I have
19 a couple of procedural issues of concern I would like to
20 raise.

21 APJ SMITH: Okay.

22 MR. ROSATO: And I will start with the
23 case, as we all know and are familiar with, the
24 US Supreme Court recently issued its decision in the
25 SAS Institute vs. Iancu case. And we're all coming up

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