

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)¹

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

SMITH, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹This Order addresses issues that are common to both cases. We, therefore, issue a single Order that has been entered in each case. The parties may use this style caption when filing a single paper in multiple proceedings, provided that such caption includes a footnote attesting that “the word-for-word identical paper is filed in each proceeding identified in the caption.”

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

An initial conference in both IPR2018-00680, involving U.S. Patent No. 9,404,127, and IPR2018-00739, involving U.S. Patent No. 9,364,435, was conducted among Judges Snedden and Smith and respective counsel for the parties on October 2, 2018. Petitioner Moderna Therapeutics, Inc. was represented by Michael Fleming and Patent Owner Protiva Biotherapeutics, Inc. was represented by Michael Rosato. A written transcript of the conference call is of record in the respective proceedings. Ex. 2008.

During the call, counsel for the parties indicated that they were aware of the recent Trial Practice Guide Update (August 2018).

Counsel for Patent Owner raised questions about the Trial Practice Guide Update and the grounds of challenge presented in the respective petitions or institution decisions. As to any potential difference between the Office Patent Trial Practice Guide published in August 2012 and the August 2018 update thereto (and any other updates), the most recent update controls unless it expressly states otherwise.

As to Patent Owner's concerns regarding the grounds of challenge, both parties will continue to have a fair opportunity to respond to any evidence or arguments presented by the other party, and improper evidence or arguments will not be allowed. For example, as set forth in the Section II (I.) of the Trial Practice Guide Update (August 2018), Patent Owner is allowed a sur-reply to respond to Petitioner's reply.

So ORDERED.

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

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