

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MODERNA THERAPEUTICS, INC.,
Petitioner,

v.

PROTIVA BIOTHERAPEUTICS, INC.,
Patent Owner.

Case IPR2018-00739
Patent No. 9,364,435

PATENT OWNER'S NOTICE OF APPEAL/CROSS-APPEAL

Pursuant to 37 C.F.R. §§ 90.2(a), 90.3 and 35 U.S.C. §§ 141(c), 142, and 319, Protiva Biotherapeutics, Inc. (“Patent Owner”) respectfully gives notice that in reference to Moderna Therapeutics, Inc.’s Notice of Appeal dated November 13, 2019, it cross-appeals to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board’s Final Written Decision entered on September 11, 2019 (Paper 51), and from all other underlying orders, decisions, rulings, and opinions.

For the limited purpose of providing the Director of the United States Patent and Trademark Office with the information specified in 37 C.F.R. § 90.2(a)(3)(ii), the issues on cross-appeal include the Board’s determination that claims 1-6, 9, 12, 14, and 15 of U.S. Patent No 9,364,435 B2 were shown to be unpatentable under 35 U.S.C. § 102 in view of the grounds of unpatentability on which trial was instituted (Paper 15). The issues on appeal/cross-appeal additionally include the unconstitutionality of the panel entering the final written decision under the Appointments Clause of the Constitution. *See Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 2018-2140 (Fed. Cir. Oct. 31, 2019); *see also UNILOC 2017 LLC v. Facebook, Inc.*, No. 2018-2251 (Fed. Cir. Oct. 31, 2019) (non-precedential order).

Simultaneous with this filing and in accordance with 37 C.F.R. § 90.2(a)(1), this Notice is being filed with the Director and served on Petitioner in

accordance with 37 C.F.R. § 42.6(e). This Notice, along with the required fees, is also being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit in accordance with Fed. Cir. R. 15(a)(1).

Dated: November 13, 2019

Respectfully Submitted,

/ Michael T. Rosato /

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CERTIFICATES OF FILING AND SERVICE

I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board's End to End system, the foregoing Notice of Appeal/Cross-Appeal was filed by Express Mail on this 13th day of November, 2019, with the Director of the United States Patent and Trademark Office, at the following address:

Director of the U.S. Patent and Trademark Office
c/o Office of the General Counsel
P.O. Box 1450
Alexandria, Virginia 22313-1450

I hereby certify that a true and correct copy of the foregoing Notice of Appeal/Cross-Appeal was filed electronically by CM/ECF on this 13th day of November, 2019, with the Clerk's Office of the United States Court of Appeals for the Federal Circuit.

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served a true and correct copy of the foregoing Notice of Appeal/Cross-Appeal on the Petitioner at the electronic service addresses of the Petitioner as follows:

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Dated: November 13, 2019

/ Michael T. Rosato /

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