

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 9,364,435

**DECLARATION OF EDWARD R. REINES IN SUPPORT OF
PATENT OWNER'S MOTION FOR *PRO HAC VICE* ADMISSION**

I, Edward R. Reines, hereby declare the following:

1. I am an attorney in the law firm of Weil, Gotshal & Manges LLP. I have over 25 years of experience as a patent litigator and have represented clients in numerous patent litigation cases in various United States District Courts and the Court of Appeals for the Federal Circuit.

2. I am comfortable and experienced with technically and legally complex matters, such as will be present in this proceeding. In particular, I am experienced with technically and legally complex matters in the life sciences, including the following exemplary matters:

- *Verinata Health, Inc. et al. v. Sequenom, Inc. et al.* (N.D. Cal. 2012) — Lead trial counsel for Verinata Health in patent litigation related to prenatal diagnostics based on cell free fetal DNA.

- *The Trustees of Columbia University in the City of New York v. Illumina, Inc.* (Fed. Cir. 2014) — Appellate counsel for Illumina in Federal Circuit appeals of IPR proceedings related to DNA sequencing nucleotides.

- *Promega Corp. v. Life Techs. Corp. et al.* (2014) — District court and appellate counsel for Life Technologies in litigation related to DNA testing kits.

- *Helicos Corp. v. Pacific Biosciences of California, Inc.* (D. Del. 2010) — Lead trial counsel for Pacific Biosciences in patent litigation related to single molecule real time DNA sequencing.

- *Applera Corp. and Roche Molecular Sys. v. MJ Research, Inc.* (D. Conn. 2005) — Trial counsel for Applera in six patent litigation involving foundational PCR intellectual property.

I have appeared *pro hac vice* in an IPR proceeding related to multiplex nucleic acid reactions. *See Ariosa Diagnostics, Inc. v. Illumina, Inc.*, IPR2014-01093, Paper No. 29 (March 16, 2015).

3. I am a member in good standing of the Bar of the State of California. I am admitted to practice before the United States Court of Appeals for the Federal Circuit.

4. I have never been suspended or disbarred from practice before any court or administrative body.

5. I have never had a court or administrative body deny my application for admission to practice.

6. I was reprimanded by the Federal Circuit in *In re Reines*, No. 14-MA004 (14-4) (Fed. Cir. Nov. 5, 2014), which is enclosed herewith as Exhibit 2002. The Federal Circuit did not halt or interrupt my ability to appear before that court and no other Court or body has done so. The basis for the reprimand is set forth in the Court's opinion. Ex. 2002. The following is my explanation of the circumstances. On March 4, 2014, I argued two cases in the Federal Circuit. On March 5, 2014, I was surprised and gratified at receiving from then-Chief Judge

Rader an email relaying an unusually generous compliment about my oral advocacy during the two arguments (“the Email”). The compliment did not address the merits of the case. It did not indicate anything about how the panel might vote in the case. It simply confirmed that I had done a very good job at my craft of appellate advocacy. The fact that the Email had come from Judge Rader did not strike me as inappropriate. The compliment itself was consistent with my relief and satisfaction that I had performed well for my clients. Judge Rader forwarding the compliment was also consistent with his well-known gregarious style. The Email’s use of the word “friend” raised no questions in my mind. That term is commonplace in Judge Rader’s lexicon. I have heard Judge Rader use it scores of times with references to many people in professional settings. The signoff did not strike me as remarkable given Judge Rader’s well-known penchant for turns of phrase. I was focused on the compliment in the Email. Judge Rader expressly encouraged me to pass along the compliment. I have received compliments about my work before and did not forward them to anyone. After thinking about the suggestion, I decided that I would pass along the Email. I forwarded the compliment to a number of people—my mom, brothers and sister, friends, clients, former clients, prospective clients, and lawyers. I did not distribute it to the general public. I selected the recipients because the unusually generous compliment from an unnamed jurist was a source of pride and might encourage them to consider me for representation in future

matters. I thought such distribution was appropriate because information about my skill at oral advocacy is an appropriate consideration in the selection of counsel. It never occurred to me that the selected recipients of the Email would think that Judge Rader could be improperly influenced because an advocate before him happened to be a friend from their years of professional interaction. To me, the Email did not suggest any such thing and the distribution of the Email did not suggest any such thing. Indeed, I would never have included in these emails the suggestion that Judge Rader would judge with bias in my matters. That suggestion would obviously be unprofessional and seen as such by my personal and professional network.

7. My explanation of this matter is also set forth in a statement I submitted to the Federal Circuit, which is enclosed herewith as Exhibit 2003.

8. I have read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in part 42 of 37 C.F.R.

9. I agree to be subject to the United States Patent and Trademark Office Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 et seq., and disciplinary jurisdiction under 37 C.F.R. § 11.19(a).

10. As noted above, I appeared *pro hac vice* in *Ariosa Diagnostics, Inc. v. Illumina, Inc.*, IPR2014-01093, which was a life-sciences related *inter partes* review proceeding before the United States Patent and Trademark Office. I also

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