

Paper No. _____
Filed: August 7, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MODERNA THERAPEUTICS, INC.,
Petitioner,

v.

ARBUTUS BIOPHARMA CORPORATION,
Patent Owner.

Case IPR2019-00554
Patent No. 8,058,069

**PATENT OWNER'S OBJECTIONS TO EXHIBITS SUBMITTED BEFORE
INSTITUTION PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Arbutus Biopharma Corporation (“Patent Owner”) submits the following objections to Moderna Therapeutics, Inc.’s (“Petitioner”) Exhibit 1008, and any reference to or reliance on the foregoing Exhibit in the Petition or future filings by Petitioner. Patent Owner’s objections are made pursuant to the Code of Federal Regulations (“C.F.R.”) governing this proceeding, including without limitation 37 C.F.R. §§ 42.61-42.65 and § 42.6(a)(3). As required by 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS.

1. Objections to Exhibit 1008, and any Reference to/Reliance Thereon

Grounds for Objection: F.R.E. 401, 402 (Irrelevant Evidence Inadmissible); F.R.E. 403 (Excluding Evidence for Prejudice, Confusion, Waste of Time, Duplication, or Other Reasons); F.R.E. 701, 702, 703 (Expert Foundation and Opinions); F.R. E. 802, 803, 805 (Inadmissible Hearsay).

EX1008 is the declaration of Dr. Janoff and is objected to in its entirety. Dr. Janoff fails to describe the underlying facts or data on which his opinions are based. Similar to Dr. Janoff’s declarations in prior proceedings, Dr. Janoff merely parrots word-for-word the attorney argument presented in the petition. In prior proceedings, Dr. Janoff expressly stated in his direct and cross-examination

testimony that his declaration was based on studying the petition, confirmed that the lawyers drafted the petition without his assistance, and that his declaration was later prepared after the petition was completed. As was the case in prior proceedings, the Janoff declaration in this proceeding is a virtual word-for-word copy of that argument offered in the present petition. Indeed, in EX1008 Dr. Janoff similarly confirms that his direct testimony is “based on studying the petition.” See, e.g., ¶¶ 5, 6 and 7.

While the present IPR involves a different patent from the prior proceedings, the content of this petition, and of Dr. Janoff’s declaration, is nearly identical to the petition and Janoff Declaration in IPR2018-00739. Moreover, in nearly every instance the content of Dr. Janoff’s Declaration, besides parroting the attorney argument found in the petition, lacks evidentiary support. Nothing in the Board’s rules or cases, nor in Federal Circuit case law, requires a fact finder to credit the unsupported assertions of an expert witness. As a result, what little (if any) probative weight the declaration is entitled to is outweighed by the prejudicial effect of the unsupported testimony in this proceeding.

III. CONCLUSION

The aforementioned exhibit was filed with the petition, prior to institution. Trial was instituted on July 24, 2019. These objections are made within 10 business days of institution pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

Dated: August 7, 2019

/ Michael T. Rosato /

Michael T. Rosato, Lead Counsel
Reg. No. 52,182

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Patent Owner's Objections to Exhibits Submitted Before Institution Pursuant to 37 C.F.R. § 42.64(b)(1) was served on August 7, 2019, at the following electronic service addresses:

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Respectfully submitted,

Dated: August 7, 2019

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