

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIONTECH SE and PFIZER INC.,
Petitioner

v.

MODERNATX, INC.
Patent Owner

IPR2023-01359
Patent No. 10,933,127

**DECLARATION OF MICHAEL J. MESTITZ IN SUPPORT OF MOTION
FOR *PRO HAC VICE* ADMISSION PURSUANT TO 37 C.F.R. § 42.10(c)**

1. I, Michael J. Mestitz, am more than twenty-one years of age, am competent to present this declaration, and have personal knowledge of the facts set forth herein.

2. This declaration is given in support of Petitioner Pfizer Inc.'s motion for *Pro Hac Vice* Admission of Michael J. Mestitz.

3. I am a member in good standing of the bars of the District of Columbia and California. My bar membership number for the District of Columbia is 1047260. My bar membership number for the State of California is 310354. I am also admitted to practice before the U.S. Court of Appeals for the First, Second, Third, Fourth, Fifth, Ninth, Tenth, Eleventh and District of Columbia Circuits. I am an associate at Williams & Connolly LLP and have eight years of litigation experience.

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

5. No court or administrative body has ever denied my application for admission to practice before it.

6. No court or administrative body has ever imposed sanctions or contempt citations on me.

7. 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.

8. I understand and agree that I will be subject to the USPTO Code of Professional Responsibility set forth in 37 C.F.R. §§ 11.101 *et seq.* and will be subject to disciplinary jurisdiction under 37 C.F.R. §§ 11.19(a).

9. Concurrently with this motion, I am applying to appear *pro hac vice* in IPR2023-01358 (regarding U.S. Patent No. 10,702,600). I have not applied to appear *pro hac vice* in any other proceedings before the Office in the last three (3) years.

10. I have gained experience with Patent Office rules, regulations, and procedures by participating in the above-listed *inter partes* review proceedings and by litigating cases involving issues of claim construction and other issues for which review of a patent's prosecution history is essential.

11. I am familiar with the subject matter at issue in the present proceeding. I have established familiarity with the issues in this case by virtue of having:

(i) Reviewed in detail the Petition, Petitioner Reply, exhibits, and papers filed by Petitioner in this proceeding, including assisting in the preparation of the Petitioner Reply and accompanying exhibits;

(ii) Reviewed in detail the challenged patent, U.S. Patent No. 10,933,127;

(iii) Reviewed in detail all pleadings and exhibits filed by Patent Owner in this proceeding;

(iv) Reviewed in detail all orders issued by the Board in this proceeding;

(v) Engaged in extensive strategic and substantive discussions regarding this proceeding with Petitioner's lead and backup counsel;

(vi) Participated in district court litigation regarding the challenged patent. *ModernaTx, Inc. et al. v. Pfizer Inc. et al.*, No. 1:22-11378-RGS (D. Mass).

12. I have reviewed in detail relevant case law and other legal authority related to the allegations made in the Petition.

* * *

I hereby declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and may jeopardize the validity of any application or any patent issuing thereon.

Executed on: September 27, 2024

By: /Michael J. Mestitz/
Michael J. Mestitz