1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
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3 PROGENICS PHARMACEUTICALS, INC.,)
et al,)
4)
Plaintiffs)
5) CA No. 24-10437-PBS
-VS-) Pages 1 - 66
6)
MIM SOFTWARE INC.,)
7)
Defendant)
8

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MOTION HEARING BY VIDEO

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BEFORE THE HONORABLE PATTI B. SARIS
11 UNITED STATES DISTRICT JUDGE

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United States District Court
16 1 Courthouse Way
Boston, Massachusetts 02210
17 October 8, 2024, 10:06 a.m.

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LEE A. MARZILLI
23 OFFICIAL COURT REPORTER
United States District Court
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MIM Software Inc. v. Progenics Pharmaceuticals, Inc.
IPR2025-00725
Progenics EX2004

1 THE COURT: Thank you.
2 MS. PIROZOLLO: And we are similarly dividing
3 with the Court's permission. This is Lisa Pirozollo. I
4 will do the 101 issues, and Ms. Butler will do the motion to
5 dismiss based on plausibility of the infringement claim.
6 THE COURT: Fine. So I shouldn't admit this to
7 you all, but I have the morning for you, and I am finding
8 this case extremely difficult because there are so many
9 patents. Is this what's known as a "patent thicket"?
10 MR. BUNIS: We would say "no," your Honor.
11 THE COURT: Well, I don't understand. I mean, I
12 haven't spent the time, obviously, you have spent with it,
13 but I don't understand really the difference between all of
14 them, and I am -- let me just start with basics -- I am not
15 going to look at each of the seven patents because it would
16 take me the rest of the year to do that. So I am looking
17 for a shortcut, if that's the pejorative way of referring to
18 it, like one patent or two patents that would settle this
19 case, or would at least move it to Step B. And I think we
20 sent that message out to you earlier this week that I --
21 *Alice* is a very difficult case, very difficult, and I have
22 written about it, and I've struggled with it. It takes a
23 lot of analysis to get through seven patents, never mind
24 just one, and, similarly, on a motion to dismiss at an early
25 stage before I don't even understand the technology. So

1 you're asking a lot of one session to deal with seven patents.
2 Let's just start there.
3 So I would like to ask perhaps on the motion to
4 dismiss, is there one from each side, maybe take one patent
5 that might settle this or might resolve it so I could decide
6 whether I can do discovery on this case?
7 MS. BUTLER: So, your Honor, Marla Butler for MIM,
8 who obviously we brought the motion. And I think the issue
9 with the plausibility on the 12(b)(6) for failure to state a
10 claim is that, you know, while we could have made arguments
11 as to all seven of these patents, we did choose the three
12 very purposefully where we think the failure to sufficiently
13 allege infringement is the most egregious. And we didn't
14 try to identify multiple elements within the three patents
15 where we think that failure exists, but we identified one
16 element in each of those three patents. And I think, as
17 we've talked through this, I'd be in a position to explain
18 this to the Court as to why, even without a deep understanding
19 of the technology --
20 THE COURT: Well, maybe, maybe not. I am just
21 frustrated. I am one session, and I don't want to deal with
22 seven patents. So I think who -- I forget -- Ms. Pirozollo,
23 who's from Hale and Dorr, Bill Lee used to be great at this,
24 which is, like, what's the one thing that would settle this
25 case, or at least get it to Step B where I think there's

1 enough there for discovery? And it would be useful for you
2 all to flag that for me because otherwise you'll be here for
3 a year while this is pending analysis. And unlike most
4 cases, no one has given me a tutorial on even the technology
5 or pictures or slides, nothing. I mean, you're expecting me
6 to sit and read through seven patents in a timely way. So
7 as you can sense the frustration, I have not had someone do
8 this to me in a really long time.
9 So I'm going to start off on the motion to
10 dismiss, and I'm going to ask you, Mr. Bunis, to start off
11 with what do you think -- explain to me these patents and
12 this patent thicket, as far as I'm concerned. Which is the
13 one that's going to be the crumbs that will bring me through
14 the forest?
15 MR. BUNIS: Well, let me start by saying,
16 obviously it's not our motion.
17 THE COURT: I understand, but --
18 MR. BUNIS: But we are perfectly comfortable using
19 one of the patents. We think that the '817 patent, which is
20 a later-filed patent, is helpful, but I'm more than happy to
21 use one of the patents from the earlier family of patents.
22 And Ms. Pirozollo selected the '346. I'm happy to use the
23 '346. But the Court has to keep in mind, Judge, and I know
24 you will, that it's not just Claim 1 when evaluating
25 eligibility under *Alice;* you have to look at all of the