

No. 2023-2048

In the United States Court of Appeals
For the Federal Circuit

In re: XENCOR, INC.,
Appellant

On Appeal from the Patent Trial and Appeal Board
PTAB Appeal No. 2022-001944

OPPOSITION TO MOTION TO REMAND

MORGAN, LEWIS & BOCKIUS LLP
Michael J. Abernathy
Christopher J. Betti
Amanda S. Williamson
Maria E. Doukas
110 North Wacker Drive
Chicago, IL 60606

MORGAN, LEWIS & BOCKIUS LLP
William R. Peterson
1000 Louisiana St., Ste. 4000
Houston, TX 77002
(713) 890-5188

Julie S. Goldemberg
2222 Market Street
Philadelphia, PA 19103

Counsel for Appellant, Xencor Inc.

CERTIFICATE OF INTEREST

Case Numbers 2023-2048

Short Case Caption *In re: Xencor, Inc.*

Filing Party/Entity Appellant Xencor, Inc.

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

/s/ Julie S. Goldemberg
 Julie S. Goldemberg
 Counsel for Appellant,
 Xencor, Inc.

Dated: November 29, 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Xencor, Inc.		BlackRock, Inc.; PRIMECAP Management Company; T. Rowe Price Group, Inc.; The Vanguard Group, Inc.

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

Yes

No

N/A (amicus/movant)

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable

INTRODUCTION

This appeal concerns means-plus-function and Jepson claims that the Patent Trial and Appeal Board wrongly rejected as failing the indefiniteness, written description, and obviousness-type double patenting standards. Appellant Xencor, Inc. has already filed its Opening Brief, and three groups of amici have filed briefs in Xencor's support. Prior to filing its motion for a remand, the Director's brief was to be filed in just ten days (after receiving an extension from this Court). Briefing should be complete by January 2024.

Now, at the eleventh hour, the Director asks this Court to remand for some ill-defined reconsideration of indefinite length. The Director has not confessed error, has not identified any intervening change in the law, and has not identified any factfinding or exercise of discretion it would conduct on remand. The Director fails to address Federal Circuit Rule 27(f) and nowhere states—let alone satisfies—the standard for a remand.

The Director instead asserts that the USPTO “seeks remand in order to issue a revised decision that clearly and thoroughly expresses the Agency’s view on the application of the case law to this important area of technology.” Mot. at 3. This misses the mark for at least three reasons.

First, the Director can “clearly and thoroughly express the Agency’s view” in the Appellee’s Brief and identifies no cognizable benefit to a remand.

Second, a remand would unduly prejudice Xencor. If this case were remanded, Xencor could lose 653 days and counting of patent term adjustment due to “C-delay” under 35 U.S.C. § 154(b)(1)(C)(iii), which seeks to compensate a patent applicant for time that an application has been in appellate review by the PTAB or a federal court. This potential loss of patent term would irreparably harm Xencor, an innovative company that, after great investment, has commercialized the claimed technology to the benefit of thousands of patients.

Third, the USPTO has had numerous opportunities to state what the Agency should always provide: a clear and thorough expression of the Agency’s view on the application of the case law to an important area of technology. That the Agency believes it failed to do so in the past does not justify harming Xencor and delaying its appeal.

The motion should be denied.

BACKGROUND

The USPTO has had many opportunities to consider whether to issue Xencor's proposed claims. The Examiner rejected claims 8 and 9 for lack of adequate written description, indefiniteness, and obviousness-type double patenting. Xencor appealed to the PTAB, where the Examiner withdrew the written description and indefiniteness rejections. In a lengthy opinion attached to Dkt. 23, Appx1-37, the PTAB affirmed the Examiner's rejection and entered new grounds, rejecting claims 8 and 9 for lack of adequate written description and claim 9 for indefiniteness once again. *Id.* at 1-2.

Xencor petitioned for rehearing, making the same arguments to the PTAB that it raises on appeal. The PTAB denied rehearing, again rejecting Xencor's arguments in a lengthy opinion, thus failing to take advantage of its second opportunity to issue Xencor's claims. Dkt. 23, at Appx38-55. Xencor filed a timely notice of appeal on June 14, 2023. Dkt. 1.

Xencor then expended significant time and resources to craft an opening brief, while simultaneously soliciting amicus support. When Xencor contacted such organizations as the American Intellectual Property Law Association, Xencor followed the associations' guidelines and copied the USPTO on its solicitation request. That request emphasized the importance of the appeal, flagging the novelty of the antibody means-plus-function and Jepson claims as well as the scholarship of

Professors Mark A. Lemley and Jacob S. Sherkow that supports Xencor's position. *See* Ex. A. The AIPLA responded, telling both parties it intended to file an amicus brief. Ex. B.

Thus, long before Xencor filed its opening brief, the USPTO was well aware of the significance of the issues and that amici would be filing in support of Xencor. The USPTO was not caught off-guard when the AIPLA; Professors Lemley and Sherkow, along with Professors Bernard Chao and Timothy R. Holbrook; and the Dana-Farber Cancer Institute filed amici briefs in support of Xencor. Dkts. 18, 21, 22.

On November 1, the Director—who represents the USPTO's interests in this appeal—asked for an extension to file her response. Xencor did not oppose. Dkt. 29.

Just eighteen days before the Director's brief was to be due, on November 20, the Director informed Xencor that she intended to request a remand. Following a telephonic conference, Xencor informed the Director that it would oppose any such request.

The Director filed her motion seeking a remand on Monday, November 27 (the "Motion"). Notably, the Director neither (i) concedes error in the Motion, (ii) seeks to consider an argument the PTAB had overlooked, nor (iii) seeks to reweigh the facts. The Director instead seeks remand only "to issue a revised

decision that clearly and thoroughly expresses the Agency’s view on the application of the case law to this important area of technology.” Mot. at 3.

The Motion mentions that the Director has created an Appeals Review Panel, consisting of “the Director, the Commissioner for Patents, and the Chief Judge of the PTAB,” and although it does not state it expressly, the Motion implies the Director will use the Appeals Review Panel to “*sua sponte*” review this case. Mot. at 3. Aside from citing a handful of cases that it characterizes as granting the USPTO’s remand requests under similar circumstances, the Motion fails to justify why this Court should grant the relief it seeks or why the USPTO could not “clearly and thoroughly expres[s]” its view of the issues in its brief to this Court.

STANDARD

This Court's Rule 27(f) provides as follows:

A motion . . . to remand should be made as soon as the grounds for the motion are known. **After the appellant . . . has filed its principal brief, the argument supporting . . . remand should be made in the response brief of the appellee.** . . . Any response to such an argument made in the response brief must be included in the reply brief.

Fed. Civ. R. 27(f) (emphasis added).

In *In re Hester*, this Court held a remand should be granted where “[1] Parties agree that remand is desirable, [2] intervening law may warrant a remand, [3] the Board may wish to concede to some or all of appellant’s demands, or [4] other circumstances may be present that would indicate that remand is appropriate.” 838 F.2d 1193, 1194 (Fed. Cir. 1988).

In *SKF USA Inc. v. United States*, this Court described a “taxonomy” of agency litigating positions, including that an “agency may request a remand, without confessing error, to reconsider its previous position.” 254 F.3d 1022, 1028 (Fed. Cir. 2001) (noting that “[a] comprehensive discussion of many of these issues is set forth in *Lawrence v. Chater*, 516 U.S. 163 (1996) (per curiam)). In these circumstances, this Court explained, “the reviewing court has discretion over whether to remand.” *Id.* at 1028.

ARGUMENT

I. The Director Fails to Demonstrate that this Court Should Exercise Its Discretion to Remand.

The Motion nowhere argues, much less establishes, that this Court should exercise its discretion to remand to the USPTO. The Motion fails to cite Federal Circuit Rule 27(f), for example, and it offers no reason to excuse its noncompliance with that rule. The USPTO knew of its “grounds for the motion”—the novelty and importance of the issues involved—by early September, when the AIPLA informed the USPTO that it would file an amicus brief supporting Xencor. To the extent that the Director wishes to reconsider the USPTO’s position, she has had more than three months since the brief was filed (indeed, eight months since rehearing was requested at the PTAB) to do so. “The timing of this motion, filed a few days before the [Director’s] brief was due, is disturbing.” *Hester*, 838 F.2d at 1193 (denying motion to remand where the Agency requested the relief “last minute,” after “appellant has already expended the time, money, and effort to file his brief” and none of the *Hester* “circumstances is present here”).

The Motion cites neither *Hester* nor *SKF*, and it fails to argue why remand is appropriate. It also fails to (i) identify any benefits from remand—the Director can “clearly and thoroughly” express the USPTO’s position in the Appellee’s Brief, as detailed below in Section II—and (ii) demonstrate that any benefits outweigh the

prejudice to Xencor (and its amici and the public) of continued delay and loss of patent term adjustment, as detailed below in Section III.

The Motion instead cites five cases for the proposition that this Court has previously granted the Director's requests to remand. As an initial matter, contrary to the Director's claim, the Court has not done so "consistently." *See, e.g., Hester*, 838 F.2d at 1193-94; *In re Reuning*, 276 F. App'x 983, 988 (Fed. Cir. 2008) (Linn, J., concurring) (noting the Court denied the Director's request for a remand and instead "instructed the Director to address the issue to the merits panel" consistent with Rule 27(f)).

Moreover, none of the five cited cases supports remand here. First, in *Marin Partners v. Heaven Hill Distilleries, Inc.*, No. 2023-1624, 2023 WL 5286458, at *1 (Fed. Cir. Aug. 17, 2023), the Trademark Trial and Appeal Board entered a default judgment against the appellant and failed to consider the merits. On appeal, the Director conceded that decision "does not specifically address all of the arguments made by the parties," No. 23-1624, Dkt. 13 at 6, and moved for remand **before** the appellant had filed its opening brief. *Id.*, Dkt. 21-1 at 1. This Court granted the motion: Rule 27(f) did not apply, and remand did not prejudice Marin because "if Marin were to prevail in this appeal, the matter would be remanded to the USPTO." *Id.*, Dkt. 13 at 7. Here, in contrast, Rule 27(f) applies, and if Xencor were to prevail,

its claims would issue, and remand would be unnecessary. Unlike in *Marin*, the Director does not concede that remand is the only (or even a likely) outcome.

Second, in *In re NCH Corp.*, No. 2022-1166, 2022 WL 1676193, at *1 (Fed. Cir. May 26, 2022), the Court granted remand where the Director conceded error and requested remand to consider arguments the PTAB overlooked. *NCH* fell squarely within *Hester* factor 3, “the Board may wish to concede to some or all of appellant’s demands.” *See also SKF USA*, 254 F.3d at 1029 (analyzing the propriety of remand where any agency “believes that its original decision is incorrect on the merits and wishes to change the result”).

Unlike in *NCH*, the Director has not conceded any error by the PTAB (such as an argument that the PTAB failed to consider). The Motion does not suggest even the possibility of a different outcome (and without reconsideration of the obviousness-type double patenting rejection, no different outcome could be possible).

Third, in *In re Rambus, Inc.*, 560 F. App’x 1005, 1006 (Fed. Cir. 2014), this Court remanded after it issued an intervening decision, in accordance with *Hester* factor 2 (“intervening law may warrant a remand”). In contrast, no intervening change in the law has occurred here.

Fourth and fifth, *In re Pannekoek*, 125 F. App’x 288 (Fed. Cir. 2005), and *In re Mandeville*, 13 F. App’x 912 (Fed. Cir. 2001), each addressed motions to remand

that appear to have been unopposed, in accordance with *Hester* factor 1 (“Parties agree that remand is desirable.”).¹

The Motion thus fails to cite any case where the Court has granted an opposed request for a remand after the filing of the opening brief, merely so that the USPTO can “clearly and thoroughly expres[s] the Agency’s view.” Mot. 3. *Hester* holds the exact opposite. 838 F.2d at 1194 (denying motion to remand where sole basis was “so the board can reevaluate the bases of its decision”). Although this Court has discretion to waive its own Rule 27(f) requirement and remand in some circumstances, it has done so sparingly and only where a *Hester* factor applied. The Director has failed to demonstrate that this Court should exercise its discretion to do so here.

II. Remand Is Unnecessary Because the Director Can Clearly and Thoroughly Express the Agency’s View on Appeal.

The Motion identifies no benefit from remand. The only justification offered—so that the USPTO can “clearly and thoroughly expres[s] the Agency’s view” on the issues, Mot. at 3—can be fully accomplished in the Appellee’s Brief (and is a justification for remand that was squarely rejected in *Hester*).

The Office of the Solicitor represents the Director in this appeal. Unsatisfied patent applicants like Xencor have the right to appeal to this Court and must “name

¹ *Mandeville* references “consent” to the remand, and *Pannekoek* references a “joint[]” motion to remand.

the Director as defendant to their suits. In representing the USPTO’s interests, the Director relies on personnel from the Office of the Solicitor.” *Nantkwest, Inc. v. Matal*, 860 F.3d 1352, 1358 (Fed. Cir. 2017) (overturned on other grounds). Thus, the Director is unquestionably the Appellee here, and the Director and her attorneys can “clearly and thoroughly expres[s] the Agency’s view on the application of the case law to this important technology” in the Appellee’s Brief. Mot. at 3. Remand is unnecessary.²

The Motion refers to—but does not actually commit to using—a new Appeals Review Panel process announced on July 24, 2023 (well after this appeal was docketed), involving a panel that by default would comprise “the Director, the Commissioner for Patents, and the Chief Judge of the PTAB.” Mot. at 3. But even if the Director plans to constitute an Appeals Review Panel for this matter, she does not explain how that process offers any benefit over simply articulating the position before this Court. Nothing prevents the Director or her attorneys from consulting with Commissioner Udupa and Chief Judge Boalick in writing the Appellee’s Brief.

Critically, the Motion does not suggest that the Director intends to find facts or exercise discretion on remand, which might be significant under *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943). *Chenery* permits this Court to “affirm the Board on

² If the Director believes that word limits prevent the USPTO from “thoroughly” expressing the Agency’s view of this case, Xencor would not oppose a reasonable enlargement of the word limits for the Appellee’s Brief.

grounds other than those relied upon in rendering its decision, when upholding the Board’s decision does not depend upon making a determination of fact not previously made by the Board.” *Castillejos v. Office of Pers. Mgmt.*, No. 2022-1036, 2022 WL 2092864, at *2 (Fed. Cir. June 10, 2022) (citing *Killip v. OPM*, 991 F.2d 1564, 1568-69 (Fed. Cir. 1993)).

Here, the Director seeks remand only to more “clearly and thoroughly expres[s] the Agency’s view[s].” Mot. at 3. But the Director is equally capable of expressing these views in the Appellee’s Brief, even if they involve novel legal analysis, without creating any impediment to this Court’s review under *Chenery*. There is no reason that “[a] revised decision will allow this Court to provide more effective review.” Mot. at 3.

The Motion identifies no benefit from remand, either to the Director to to Xencor. The purpose for which the Motion seeks remand—a more thorough articulation of the agency’s views—was rejected in *Hester* and can be fully and appropriately accomplished in the Appellee’s Brief.

III. Remand Would Cause Undue Prejudice to Xencor.

While there would be no identifiable benefit to remand, there would be significant costs. Remand would unduly prejudice Xencor for at least two reasons.

First, if the case were remanded, Xencor could lose 653 days and counting of patent term adjustment due to “C-delay” under 35 U.S.C. § 154(b)(1)(C)(iii), which

seeks to compensate a patent applicant for time that an application has been in appellate review by the PTAB or a federal court.³

Second, as this Court is well aware, delay in patentability causes economic harm. Xencor has diligently followed the Agency's procedures while pursuing its claims. When the Examiner denied claims 8 and 9 even after hearing the same arguments Xencor presses on appeal, Xencor appealed to the PTAB. When the PTAB denied claims 8 and 9, Xencor petitioned for rehearing. Only after the Agency **thrice** denied Xencor after rehearing did Xencor file its appeal with this Court. Xencor then prepared and filed its Opening Brief, and it successfully sought amicus support.⁴

Remand would simply impose delay and expense. The Motion does not substantively refer to the obviousness-type double patenting rejection, indicating

³³ The C-delay provision covers delay due to “appellate review by the Patent Trial and Appeal Board or by a Federal court in a case in which the patent was issued under a decision in the review reversing an adverse determination of patentability.” 35 U.S.C. § 154(b)(1)(C)(iii). This Court held the statutory language regarding C-delay for “appellate review” requires a “decision in the review reversing an adverse determination of patentability.” *Chudik v. Hirshfeld*, 987 F.3d 1033, 1035 (Fed. Cir. 2021) (citing 35 U.S.C. § 154(b)(1)(C)(iii)). “That language, [this Court] conclude[d], is reasonably interpreted—indeed, is best interpreted—to require a reversal decision made by the Board or a reviewing court, thus excluding time spent on a path pursuing such a decision when, . . . , no such decision is ever issued.” *Id.*

⁴ There is no guarantee that amici will undertake the time and expense to come forward again after a remand, which could leave this Court without the benefit of the reasoned briefs in a subsequent appeal.

that even if the USPTO were to reconsider the written description and indefiniteness analyses, Xencor's claims would remain rejected. Xencor would then have to file yet another appeal. Remand would thus merely delay the adjudication of Xencor's claims even further, frustrating Xencor's interests. *See In re Reuning*, 276 F. App'x at 987 (concurring opinion by Judge Linn to "express [his] disappointment over the delays experienced in this case" where the Board "steadfastly reiterat[ed]" positions during appeal and rehearing only to reverse course on appeal; "by forcing Reuning to appeal before recognizing the superficial nature of its actions, the Board squandered judicial resources and needlessly frustrated Reuning's interests.").

In *Lawrence*, 516 U.S. at 167-68, which this Court referenced in *SKF*, the Supreme Court instructed that whether a "GVR" (grant, vacate, remand) order from the Supreme Court is appropriate "depends further on the equities of the case: If it appears that . . . the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court, a GVR order is inappropriate." *Lawrence's* guidance is instructive here: the prejudice to Xencor in both potential loss of patent term adjustment and further cost and delay entailed in a remand are not justified by the vague and dubious purported benefits of further consideration by the PTAB.

CONCLUSION & PRAYER FOR RELIEF

The Director has failed to proffer any persuasive reason why this case should be remanded at this late procedural stage. The Director can present the USPTO's view on all issues in the Appellee's Brief. But remand will unduly prejudice Xencor, which may lose almost two years of patent term adjustment due to C-delay. For the foregoing reasons, this Court should deny the Director's motion to remand.

Dated: November 29, 2023

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Julie S. Goldemberg
Julie S. Goldemberg
2222 Market Street
Philadelphia, PA 19103

William R. Peterson
1000 Louisiana St., Ste. 4000
Houston, TX 77002

Michael J. Abernathy
Christopher J. Betti
Amanda S. Williamson
Maria E. Doukas
110 North Wacker Drive
Chicago, IL 60606

Counsel for Appellant

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

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/s/ Julie S. Goldemberg
Julie S. Goldemberg
Counsel for Appellant,
Xencor, Inc.

Dated: November 29, 2023

EXHIBIT A

From: [Goldemberg, Julie S.](#)
To: sisrael@shb.com
Cc: mary.kelly@uspto.gov; farheena.rasheed@uspto.gov; monica.lateef@uspto.gov; amy.nelson@uspto.gov; thomas.krause@uspto.gov; [Peterson, William R.](#)
Subject: Request for Amicus Support from the AIPLA
Date: Friday, July 28, 2023 9:55:48 AM
Attachments: [Xencor amicus support letter AIPLA.pdf](#)
[Xencor Decision.PDF](#)
[Xencor Rehearing Decision.PDF](#)

Dear Sharon,

As you will see in the attached correspondence, we are requesting amicus support from the AIPLA in a pending appeal. I have copied opposing counsel on this request.

We look forward to hearing from you, and thank you for your consideration.

Best,

Julie

Julie S. Goldemberg

Morgan, Lewis & Bockius LLP

1701 Market Street | Philadelphia, PA 19103-2921

Direct: +1.215.963.5095 | Cell:+1.717.371.6086 | Main: +1.215.963.5000 | Fax: +1.215.963.5001

julie.goldemberg@morganlewis.com | www.morganlewis.com

Assistant: Donna M. Gappa | +1.215.963.4858 | donna.gappa@morganlewis.com

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Morgan Lewis

William R. Peterson

Partner
+1.713.890.5188
william.peterson@morganlewis.com

July 28, 2023

Sharon Israel, Chair, AIPLA Amicus Committee
sisrael@shb.com

Re: In re: Xencor, Inc., No. 23-2048 (Fed. Cir.)

Dear Ms. Israel:

We are seeking amicus support from the American Intellectual Property Law Association on behalf of Xencor, Inc., in its pending appeal before the Federal Circuit in *In re: Xencor, Inc.*, No. 23-2048 (Fed. Cir.), which presents an issue regarding antibody patent eligibility.

The *Xencor* appeal challenges the U.S. Patent Trial and Appeal Board's decision rejecting proposed claims 8 and 9 in U.S. Patent App. No. 16/803,690. Claims 8 and 9 are both directed to methods of treating a patient by administering an anti-C5 antibody. Claim 9 contains a means-plus-function limitation directed to a means for binding human C5 protein:

A method of treating a patient by administering an anti-C5 antibody comprising:

- a) means for binding human C5 protein; and
- b) an Fc domain comprising amino acid substitutions M428L/N434S as compared to a human Fc polypeptide, wherein numbering is according to the EU index of Kabat, wherein said anti-C5 antibody with said amino acid substitutions has increased in vivo half-life as compared to said antibody without said substitutions.

Copies of the Board's decision and its decision on rehearing are attached. Claim 9 stands rejected for lacking written description and as indefinite, as well as for obviousness-type double patenting.¹

To our knowledge, claim 9 will be the first means-plus-function antibody claim the Federal Circuit has had the opportunity to review—certainly post-*Amgen*—and this case provides the Court the opportunity to consider the very solution Professors Mark A. Lemley and Jacob S. Sherkow recently recommended in their article in the Yale Law Journal, M. Lemley & J. Sherkow, *The Antibody Patent Paradox*, 132 YALE L. J. 994 (2023), available at <https://www.yalelawjournal.org/article/the-antibody-patent-paradox>. The Supreme Court cited this article in its *Amgen* opinion, and Judge

¹ This rejection should not hold up on appeal because the reference at issue is directed to a distinct and separate antibody, and the Board failed to make a *prima facie* case of obviousness.

Morgan, Lewis & Bockius LLP

1000 Louisiana Street
Suite 4000
Houston, TX 77002
United States

T +1.713.890.5000
F +1.713.890.5001

Sharon Israel, Chair, AIPLA Amicus Committee
July 28, 2023
Page 2

Raymond Chen of the Federal Circuit recently asked about using the means-plus-function format for claims related to antibodies during oral argument in *Baxalta Inc. v. Genentech, Inc.*, No. 22-1461, available at https://oralarguments.cafc.uscourts.gov/default.aspx?fl=22-1461_07122023.mp3 (minute 29:40).

On appeal to the Federal Circuit, we plan to argue that the specification's reference to "anti-complement (C5) antibodies such as 5G1.1" is sufficient corresponding structure performing the claimed function because the structure of 5G1.1 was well-known in the art. The Board erred by holding that a means-plus-function antibody claim could satisfy the written description only if the specification disclosed not just the known structure, 5G1.1, but also all possible equivalents.

As you are no doubt aware, the focus of written description is on the claims, not any equivalents thereof. As Professors Lemley and Sherkow recognized, the means-plus-function format should provide a viable way of claiming an antibody whereby the claim is not limited just to the structure disclosed but also to any structural equivalents. We have identified no case in which the Federal Circuit has held (or suggested) that the legal doctrine of equivalents transforms a species claim into a functional genus claim like those rejected in *Amgen*.

Given the significant importance of antibody patent eligibility and its impact on IP law and practice, we would welcome AIPLA's support here. We plan to file our opening brief on or before September 29, 2023, with amicus submissions due seven days later.

Our opposing counsel from the Office of the Solicitor of the U.S. Patent and Trademark Office is identified below:

Mary L. Kelly, Associate Solicitor: mary.kelly@uspto.gov
Farheena Yasmeen Rasheed, Deputy Solicitor: farheena.rasheed@uspto.gov
Monica Barnes Lateef, Associate Solicitor: monica.lateef@uspto.gov
Amy J. Nelson, Senior Counsel for Patent Policy and Litigation: amy.nelson@uspto.gov
Thomas W. Krause, Solicitor: thomas.krause@uspto.gov

Office of the Solicitor, U.S. Patent and Trademark Office
P.O. Box 1450, Mail Stop 8
Alexandria, Virginia 22313-1450
(571) 272-9035

Thank you for your consideration of this very important issue. I would be glad to discuss this case with you further and look forward to hearing from you.

Very truly yours,

William R. Peterson

EXHIBIT B

From: [Fiacco, Barbara](#)
To: [Peterson, William R.](#); mary.kelly@uspto.gov; farheena.rahsheed@uspto.gov; monica.lateef@uspto.gov; thomas.krause@uspto.gov; amy.nelson@uspto.gov
Subject: consent to file amicus brief -- In re Xencor, No. 23-2048 (Fed. Cir.)
Date: Monday, September 18, 2023 7:48:28 PM

[EXTERNAL EMAIL]

Counsel,

The American Intellectual Property Law Association (“AIPLA”) intends to file an amicus brief in the above-referenced case and wants to know whether the parties will consent. AIPLA maintains the substance of what it may say in an amicus brief as confidential until a brief is on file.

Please let us know if the parties consent to an amicus filing by AIPLA.

Thank you.

Barbara Fiacco

Barbara Fiacco | Partner

FOLEY

HOAG LLP

FOLEY HOAG LLP

Seaport World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2600

+16178321227 phone

www.foleyhoag.com

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