

Fed. Circ. Revives ImmunoGen's Cancer Treatment Patent App

By **Adam Lidgett**

Law360 (March 25, 2022, 5:21 PM EDT) -- The Federal Circuit ruled Friday that a Virginia federal court erred when it backed a U.S. Patent and Trademark Office finding that rejected ImmunoGen's application for a patent on a cancer treatment, reviving the company's attempt for the patent.

A three-judge panel threw out an Eastern District of Virginia federal court's summary judgment that claims in ImmunoGen Inc.'s U.S. Application No. 14/509,809 were not patentable.

The lower court wrongly "resolved numerous factual disputes against non-movant ImmunoGen," which doomed that lower court decision, the panel said in its decision remanding the case back down.

The district court judge based his decision on what he said was "undisputed" evidence, but the circuit panel said "the underlying material factual findings are far from undisputed," according to the appellate court decision.

The case started after ImmunoGen asked the USPTO for a patent on a way to treat cancer with what is called mirvetuximab, an immunoconjugate "composed of an antibody coupled to a drug via a chemical linker," the panel said.

But the Patent Trial and Appeal Board shot down the bid for a patent after backing a patent examiner's finding that the claims were not patentable, according to court documents.

After the PTAB decision, the case made its way to U.S. District Judge T. S. Ellis III in Virginia. The judge found that the claims at issue in the would-be patent were both obvious and indefinite, according to court records, prompting the instant appeal.

ImmunoGen said in a statement to Law360 on Friday that "mirvetuximab is a promising treatment for patients with platinum-resistant ovarian cancer that is covered by a broad, international patent estate that extends well into the 2030s."

"This additional patent application would cover a novel dosing regimen developed under our clinical program," the company said. "ImmunoGen is pleased by today's decision by the Federal Circuit, which opens up the possibility of obtaining additional and extended patent protection for dosing mirvetuximab and is important to providing the appropriate incentive for such discoveries."

The USPTO declined to comment to Law360 on Friday.

U.S. Circuit Judges Pauline Newman, Raymond C. Clevenger and Kara Farnandez Stoll sat on the panel for the Federal Circuit.

ImmunoGen is represented by Michael E. Joffre, Pauline M. Pelletier and Eric K. Steffe of Sterne Kessler Goldstein & Fox PLLC.

The USPTO is represented in-house by Thomas W. Krause, Daniel Kazhdan and Mary L. Kelly and by Raj Parekh and Matthew J. Mezger of the Office of the United States Attorney.

The case is ImmunoGen Inc. v. Hirshfeld, case number 21-1939, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Daniel King.