

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

PHIGENIX, INC.,  
Plaintiff,  
v.  
GENENTECH INC,  
Defendant.

Case No. [15-cv-01238-BLF](#)

**ORDER GRANTING GENENTECH'S  
MOTION FOR LEAVE TO FILE MSJ**

[Re: ECF 229]

Before the Court is Genentech’s administrative motion for leave to file a summary judgment motion without the motion counting against the Court’s one motion for summary judgment allowance. ECF 229. Genentech seeks to file a 12 page motion for summary judgment on the grounds that the asserted patent is invalid because (1) the written description for the ’534 patent does not support the broad “any composition claim” Phigenix has asserted and 2) the written description in the 2005 application to which Phigenix claims priority does not support the claimed “method of treating a breast condition,” so the asserted claims are not entitled to that priority date, and therefore the accused product anticipates because it was in public use more than a year before the ’534 patent’s 2010 filing date. *Id.*

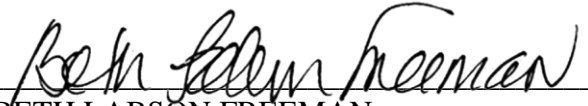
Phigenix opposes the request because it believes Genentech’s motion necessarily involves disputed issues of fact and therefore will only serve to burden the parties and the Court. ECF 230. In the alternative, Phigenix requests that the Court preclude Genentech from (1) using expert declarations with the motion as expert discovery has not yet commenced, (2) raising any issues under 35 U.S.C. § 112 in any later motion, and (3) decreasing the page count for any subsequent summary judgment motion by 75% of the pages used in the proposed motion (i.e. if Genentech files a 12 page motion, any subsequent summary judgment motion will be limited to 16 pages).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

After reviewing the parties' briefing, the Court GRANTS Genentech's motion for leave to file an early summary judgment motion. The Court SETS the page limits for the early summary judgment motion to 12 pages for the opening brief, 12 pages for the opposition brief, and 7 pages for the reply brief. Genentech may not raise any issues raised in this summary judgment motion in a later motion for summary judgment and the Court reduces the page count for any later filed summary judgment motion to 20 pages for the opening and opposition briefs and 12 pages for the reply brief.

**IT IS SO ORDERED.**

Dated: August 8, 2016

  
BETH LABSON FREEMAN  
United States District Judge