

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUPIN LIMITED,
Petitioner,

v.

VERTEX PHARMACEUTICALS INCORPORATED,
Patent Owner.

Case IPR2016-00558
Patent 6,436,989 B1

Before LORA M. GREEN, SHERIDAN K. SNEDDEN, and
ROBERT A. POLLOCK, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

ORDER
Granting Request for Oral Argument
37 C.F.R. § 42.70

I. INTRODUCTION

The oral hearing for this case is schedule for April 5, 2017. Both parties have requested oral hearing pursuant to 37 C.F.R. § 42.70. Papers 26 and 28. The parties' requests for oral hearing are *granted*.

A. *Time and Format*

The hearing will commence at **9:30 AM Eastern Time on April 5, 2017**. The hearing will be open to the public, for in-person attendance, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. In-person attendance will be accommodated on a first come, first served basis.

Petitioner will have 45 minutes to present its argument in this case. Patent Owner will have 45 minutes to respond. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue are unpatentable. Therefore, Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. After Petitioner's presentation, Patent Owner will respond to Petitioner's argument. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing.

B. *Demonstratives*

As set forth in 37 C.F.R. § 42.70(b), demonstrative exhibits shall be served on opposing counsel at least seven business days before the hearing. However, in regard to filing demonstrative exhibits, and in contrast to what is expressly stated in § 42.70(b), the parties shall file the demonstrative

exhibits no later than two business days before the hearing, to allow the panel sufficient time to review the materials.

The panel reminds the parties that demonstrative exhibits are not evidence, but are intended to assist the parties in presenting their oral arguments to the Board. The panel will distinguish evidence in the record from argument appearing in demonstrative exhibits, and all arguments must be supported by evidence already of record. The panel also reminds the parties that demonstrative exhibits are not a mechanism for making arguments not previously addressed in the Papers. The panel will not consider arguments or evidence appearing only in demonstrative exhibits.

Due to the nature of the panel's consideration of demonstrative exhibits, the panel does not anticipate that objections to such exhibits would likely be sustained. Nevertheless, to the extent that the parties object to the propriety of any demonstrative exhibit, we expect that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If such objections cannot be resolved, the parties may file any objections to demonstratives with the Board at least two business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. We will consider any objections and schedule a conference call if deemed necessary. Otherwise, we will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

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Finally, the parties are reminded that each presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript.

C. Lead Counsel

The Board expects lead counsel for each party to be present at the oral hearing, although any backup counsel may present the party's argument. If either lead counsel is unable to be present at the hearing, the Board shall be advised by email no later than two (2) business days prior to the oral hearing, and such lead counsel shall be available for a conference call if necessary.

D. Audio/Visual Equipment Requests

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. **Requests for audio-visual equipment are to be made 5 days in advance of the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.**

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