

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OSI PHARMACEUTICALS, LLC,
and GENENTECH, INC.,

Petitioner,

v.

ARCH DEVELOPMENT CORP. and
DANA-FARBER CANCER INSTITUTE, INC.,

Patent Owner.

Case IPR2016-01034
Patent 7,838,512 B1

Before TINA E. HULSE and ROBERT A. POLLOCK,
Administrative Patent Judges.

POLLOCK, *Administrative Patent Judge.*

ORDER
Trial Hearing
37 C.F.R. § 42.70

Petitioner and Patent Owner requested oral hearing pursuant to 37 C.F.R. § 42.70 in the above-referenced proceeding. Papers 35, 36. The parties' requests for oral hearing are granted.

The proceeding will commence at 1:00 PM on June 20, 2017, on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, Virginia. The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing.

The hearing room can accommodate the lead counsel and a back-up counsel for each party. Other members of the parties will be accommodated, based on space availability, on a first-come, first-served basis. The hearing will be open to the public for in-person attendance that also will be accommodated on a first-come, first-served basis.

Each party will have sixty (60) minutes of total oral argument time. Petitioner bears the ultimate burden of proof that the patent claims at issue in this review are unpatentable. Petitioner, therefore, will proceed first to present its case regarding the pending grounds of unpatentability. Thereafter, Patent Owner will have the opportunity to respond to Petitioner's arguments. If desired, Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. Patent Owner may not reserve rebuttal time.

At least seven (7) business days before the hearing date, each party shall serve on the other party any demonstrative exhibit(s) it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). The parties also shall provide a courtesy copy of any demonstrative exhibits to the Board at least three (3) business days before the hearing by emailing them to Trials@uspto.gov. Absent prior authorization, the parties shall not file any demonstrative exhibit(s) with the Board.

Demonstrative exhibits are not evidence, but are intended to assist the parties in presenting their oral arguments to the Board. Demonstrative exhibits may not introduce new evidence or raise new argument but, instead, should cite to evidence in the record. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB January 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. For any objections that cannot be resolved after conferring, the parties may file jointly a one-page list of objections at least three (3) business days before the oral hearing. The list shall identify with particularity the portions of the demonstrative exhibits that are subject to objection and include a one-sentence statement of the basis for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections until the oral argument. Any objection to demonstrative exhibits that is not presented timely will be considered waived. Neither party shall be permitted to interrupt their opponent's presentation to lodge objections to demonstrative exhibits during the oral hearing.

Each party shall provide a hard copy of its demonstrative exhibits to the court reporter at the hearing. The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location, and that if a demonstrative is not made fully available or visible to the judge participating in the hearing remotely, that demonstrative will not be considered. The parties are reminded that the 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 court reporter's transcript and the ability of the judge participating in the hearing remotely to closely follow the presenter's arguments.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party's argument. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two (2) business days prior to the oral hearing to discuss the matter.

Questions regarding specific audio-visual equipment shall be directed to the Board at 571-272-9797. Requests for audio-visual equipment are to be made no later than five (5) days before the oral hearing date in an email communication to Trials@uspto.gov. If a request is not received timely, the equipment may not be available on the day of the oral hearing.

Accordingly, it is

ORDERED that oral hearing, conducted pursuant to the procedures outlined above, shall commence at 1:00 PM EST on June 20, 2017, on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, Virginia.

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