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Paper 41 (IPR2017-00378)  
Paper 40 (IPR2017-00380)  
Paper 40 (IPR2017-00390)  
Entered: January 25, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MERCK SHARP & DOHME CORP.,  
Petitioner,

v.

WYETH LLC,  
Patent Owner.

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Case IPR2017-00378  
Case IPR2017-00380  
Case IPR2017-00390  
Patent 8,562,999 B2

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Before ERICA A. FRANKLIN, SHERIDAN K. SNEDDEN, and  
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

ORDER<sup>1</sup>  
Trial Hearing  
37 C.F.R. § 42.70

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<sup>1</sup> This Order addresses issues common to each captioned case. Thus, we enter the same Order in each case.

Petitioner and Patent Owner have each filed a request for oral hearing pursuant to 37 C.F.R. § 42.70. Papers 35, 36.<sup>2</sup> The requests are *granted* according to the terms set forth in this Order. The oral argument will commence at **1:00 PM Eastern Time on Tuesday, February 27, 2018**, in Hearing Room D on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

Each party will have one hour to present arguments. Petitioner bears the ultimate burden of proof that the claims at issue in this review are unpatentable. Therefore, at oral argument, Petitioner will proceed first to present its case regarding the challenged patent claims and the grounds on which the Board instituted trial. Petitioner may reserve some of its argument time to respond to arguments presented by the Patent Owner. After Petitioner's initial presentation, Patent Owner will be given an opportunity to respond. Thereafter, Petitioner may use any reserved time to reply to Patent Owner's presentation. Patent Owner may not reserve rebuttal time.

The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. Please be advised, available seating is limited. The Board will provide a court reporter, and the reporter's transcript shall constitute the official record of the trial hearing.

The parties shall serve any demonstrative exhibits on opposing counsel at least seven business days before the hearing. The parties shall also provide a courtesy copy of any demonstrative exhibits to the Board no later than two business days before the hearing by emailing them to

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<sup>2</sup> Citation refers to papers filed in IPR2017-00378. Similar papers were filed in each case.

Trials@uspto.gov. Notwithstanding 37 C.F.R. § 42.70(b), the parties shall not file any demonstrative exhibits in these proceedings.

Demonstrative exhibits are not evidence and are intended only to assist the parties in presenting their oral argument to the panel. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65) for guidance regarding the appropriate content of demonstrative exhibits.

The parties shall confer with each other regarding any objections to demonstrative exhibits. For any issue that cannot be resolved after conferring, the parties may each file a one-page list of objections at least two business days before the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a telephone conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

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 reporter's transcript, and to assist Judge Harlow who will join the hearing remotely from Denver, Colorado. Judge Harlow will be unable to view images projected in the hearing room. Similarly, to ensure presenters may

be heard by Judge Harlow, the parties are reminded to speak only when standing at the hearing room podium and toward the attached microphone.

The Board expects lead counsel for each party to be present in person at the oral hearing. Any counsel of record, however, may present the party's argument. If either party anticipates 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 business days prior to the oral hearing to discuss the matter.

The parties may request the use of audio-visual equipment during the oral hearing. Such requests should be directed to [Trials@uspto.gov](mailto:Trials@uspto.gov) at least five business days in advance of the hearing date. If the request is not received timely, the equipment may not be available on the day of the hearing.

Accordingly, it is

ORDERED that oral arguments in this proceeding shall take place beginning at 1:00 PM Eastern Time on February 27, 2018, in Hearing Room D on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria.

IPR2017-00378; IPR2017-00380; IPR2017-00390  
Patent 8,562,999 B2

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