

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COOK GROUP INCORPORATED
and COOK MEDICAL LLC,
Petitioner,

v.

BOSTON SCIENTIFIC SCIMED, INC.,
Patent Owner.

IPR2017-00435 (Patent 9,271,731 B2)
IPR2017-00440 (Patent 9,271,731 B2)

Before JAMES T. MOORE, JAMES A. TARTAL,
and ROBERT L. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

ORDER
Requests for Oral Argument
37 C.F.R. § 42.70

IPR2017-00435 (Patent 9,271,731 B2)

IPR2017-00440 (Patent 9,271,731 B2)

Cook Group Incorporated and Cook Medical, LLC (“Petitioner”) and Boston Scientific Scimed, Inc. (“Patent Owner”) request oral argument in cases IPR2017-00435 and IPR2017-00440 pursuant to 37 C.F.R. § 42.70. Papers 86 and 85, IPR2017-00435; and, Papers 84 and 83, IPR2017-00440. By way of background, oral argument was conducted for these two proceedings on April 19, 2018, a transcript for which was previously filed in each case. Paper 72, IPR2017-00435; Paper 69, IPR2017-00440. Subsequently, in consideration of the Supreme Court holding in *SAS Inst., Inc. v. Iancu*, additional grounds were instituted in each case. *See* 138 S. Ct. 1348, 1354 (2018); *see, e.g.*, Papers 71 and 76, IPR2018-00435.

Following supplemental briefing on the additional grounds, Patent Owner and Petitioner both propose presenting additional arguments in a single hearing for both cases, as well as for related cases. *See, e.g.*, Papers 85 and 86, IPR2017-00435. Patent Owner requests 90 minutes and Petitioner requests 2 hours of total argument time on all six cases for each side. *Id.*

Although we appreciate that there may be overlap in certain issues across all six cases, we are not persuaded that a single hearing for all six cases is warranted. For the efficient administration of the cases, the parties’ requests for oral argument in IPR2017-00435 and IPR2017-00440 are *granted* as provided below.

Cases IPR2017-00435 and IPR2017-00440 have not been consolidated or joined, but entail overlapping issues such that oral argument will be provided in a single hearing on September 17, 2018, beginning at **1:30 PM Eastern Time** on the ninth floor of the Madison Building East,

IPR2017-00435 (Patent 9,271,731 B2)

IPR2017-00440 (Patent 9,271,731 B2)

600 Dulany Street, Alexandria, VA. Each party will have a total of 60 minutes of argument time. The parties may allocate their argument time at their discretion over each of the two cases, not to exceed 60 minutes in total for each party. Petitioner will first present arguments in IPR2017-00435 and IPR 2017-00440 concerning U.S. Patent No. 9,271,731 B2. Patent Owner then will have the opportunity to respond to Petitioner's arguments. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Then, Patent Owner may present a brief sur-rebuttal if it has reserved time.

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 will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are requested to contact the Board at least seven days in advance of the hearing to discuss the matter. Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing date and filed no later than the time of the oral argument. The parties also shall provide a courtesy copy of any demonstrative exhibits to the Board at least five business days prior to the hearing by emailing them to Trials@uspto.gov.

The parties must file any objections to the demonstrative exhibits with the Board at least two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstrative exhibits are subject to objection, and include a short (one

IPR2017-00435 (Patent 9,271,731 B2)

IPR2017-00440 (Patent 9,271,731 B2)

sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties are reminded that the demonstrative exhibits presented in this case are not evidence and are intended only to assist the parties in presenting their oral argument to the panel.

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 business days prior to the oral hearing to discuss the matter. Any special requests for audio-visual equipment should be directed to Trials@uspto.gov. Requests for special equipment will not be honored unless presented in a separate communication not less than five days before the hearing directed to the above email address.

IPR2017-00435 (Patent 9,271,731 B2)

IPR2017-00440 (Patent 9,271,731 B2)

PETITIONER:

Dominic Zanfardino

Jeffry Nichols

Jason Schigelone

James Oehler

David Bernard

Robert Mallin

BRINKS GILSON & LIONE

dpz@brinksgilson.com

jnichols@brinksgilson.com

jschigelone@brinksgilson.com

joehler@brinksgilson.com

dbernard@brinksgilson.com

rmallin@brinksgilson.com

PATENT OWNER:

David Caine

Wallace Wu

ARNOLD & PORTER KAYE SCHOLER LLP

david.caine@aporter.com

wallace.wu@aporter.com