

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EDWARDS LIFESCIENCES CORPORATION,
Petitioner,

v.

BOSTON SCIENTIFIC SCIMED, INC.,
Patent Owner.

Case IPR2017-01295
Patent 8,709,062 B2

Before JAMES A. TARTAL, ROBERT L. KINDER, and AMANDA F. WIEKER,
Administrative Patent Judges.

WIEKER, *Administrative Patent Judge.*

ORDER

Oral Argument

35 U.S.C. § 316(a)(10) and 37 C.F.R. § 42.70

On October 25, 2017, we instituted an *inter partes* review proceeding as to claims 1–7, 9–15, 17–21, and 23–36 of U.S. Patent No. 8,709,062, on one asserted ground of unpatentability, i.e., under 35 U.S.C. § 103(a) over Rupp, Sugiyama, Jendersee, and the knowledge of a POSITA. See Paper 9, 33–34. On April 30, 2018, pursuant to the U.S. Supreme Court’s decision in *SAS Institute, Inc. v. Iancu*, 2018 WL 1914661 (U.S. Apr. 24, 2018), we modified our institution decision to include all challenged claims and grounds presented in the Petition. Paper 17, 2. August 7, 2018, is the date scheduled for oral argument in this proceeding, if requested by a party. Paper 10, 7. Both parties request oral argument for this proceeding, pursuant to 37 C.F.R. § 42.70(a). Papers 21, 22. The parties’ requests are *granted*.

The hearing will commence at **10:00 AM Eastern Time on August 7, 2018**, and 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. We will provide a court reporter for the hearing, and the reporter’s transcript will constitute the official record of the hearing.

Both Petitioner and Patent Owner request forty-five minutes of oral argument time. Paper 21, 3; Paper 22, 1. We have reviewed the issues that the parties intend to address in this proceeding, and we determine that each party should be accorded forty-five (45) minutes of total argument time.

Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. 35 U.S.C. § 316(e). Petitioner, therefore, will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. After Petitioner’s presentation, Patent Owner may

respond to Petitioner's argument. Petitioner may reserve time for rebuttal, out of its allotted time, to respond to argument presented by Patent Owner.

Pursuant to 37 C.F.R. § 42.70(b), demonstrative exhibits must be served no later than seven (7) business days before the hearing date. They shall be filed with the Board no later than five (5) business days before the hearing date. **Demonstrative exhibits are not evidence, but merely a visual aid for use at the hearing.** Demonstrative exhibits shall not introduce new arguments or evidence. The parties shall meet and confer to discuss any objections to demonstrative exhibits at least three (3) business days before the hearing. If any issues regarding demonstratives remain unresolved after the parties meet and confer, the parties shall file jointly a one-page list of objections to the demonstrative exhibits at least two (2) business days before the hearing. For each objection, the list must identify with particularity the demonstratives subject to the objection and include a short, one-sentence statement explaining the objection. We will consider the objections and schedule a conference call if necessary. Regardless of whether the propriety of any demonstrative exhibit is disputed by either party, we consider demonstrative exhibits only to the extent (1) they elucidate the parties' arguments presented during the hearing *and* (2) they include only arguments and/or evidence already of record in the proceedings. For further guidance on what constitutes an appropriate demonstrative exhibit, the parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118).

We expect lead counsel for each party to be present at the hearing; however, any backup counsel may make the actual presentation, in whole or

in part. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,758 (Aug. 14, 2012). If lead counsel for either party is unable to attend the hearing, the parties shall request a joint telephone conference call no later than two (2) business days prior to the hearing date to discuss the matter.

At least one member of the panel may be attending the hearing electronically from a remote location and will have access only to the courtesy copy of the demonstratives provided in advance, as referenced above, and will not be able to view the projection screen in the hearing room. We take this opportunity to remind the parties 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, and to enable any judge that is attending the hearing from a remote location to follow the presentation.

Requests for special accommodations or audio-visual equipment are to be made at least five (5) business days in advance of the hearing date. Such requests must be sent to Trials@uspto.gov. If the requests are not received timely, requested accommodations and/or equipment may not be available on the day of the hearing.

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