

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUEVOLUTION A/S,
Petitioner,

v.

CHEMGENE HOLDING APS,
Patent Owner.

IPR2017-01598 (Patent 8,168,381 B2)
IPR2017-01599 (Patent 8,168,381 B2)
IPR2017-01603 (Patent 8,951,728 B2)¹

Before ROBERT A. POLLOCK and TIMOTHY G. MAJORS,
Administrative Patent Judges.

MAJORS, *Administrative Patent Judge.*

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

¹ We exercise our discretion to issue one Order to be filed in each of the three related cases. The parties are not authorized to use this style of heading.

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Introduction

This Order replaces and supersedes the Sept. 7, 2018 Order Granting Request for Oral Argument in the above-captioned cases. *See, e.g.*, IPR2017-01598, Paper 41 (“Sept. 7 Hearing Order”).

On August 22, 2018, Petitioner and Patent Owner requested oral hearing pursuant to 37 C.F.R. § 42.70. *See, e.g.*, IPR2017-01598, Papers 37 and 38. The Board granted the parties’ requests and set the oral hearing for Sept. 18, 2018 as provided in Scheduling Order (*see, e.g.*, IPR2017-01598, Paper 17) and the Sept. 7 Hearing Order in these proceedings.

After the Sept. 7 Hearing Order was entered, the parties informed the Board that Patent Owner sought to withdraw its request for oral hearing, and that Patent Owner preferred to have Petitioner’s challenges be decided on the papers and to avoid the expense of preparing for and conducting the oral hearing. *See, e.g.*, IPR2017-01598, Paper 42 (Notice of Stipulation and Proposed Order).² A conference between the parties and the Board was held on Sept. 10, 2018 to discuss these matters. Although Petitioner did not oppose Patent Owner’s request to withdraw Patent Owner’s request for oral hearing, Petitioner indicated that was not withdrawing its own request for oral hearing at that time. *Id.* at 1–2. Patent Owner’s request to withdraw the request for oral hearing has been granted. *See, e.g.*, IPR2017-01598, Paper 43. During the conference, the Board informed the parties that, insofar as

² Concurrent with its request to withdraw Patent Owner’s request for oral hearing, Patent Owner also informed the Board that Patent Owner sought to withdraw its Contingent Motions to Amend in IPR2017-01598, IPR2017-01599, and IPR2017-01603. *See, e.g.*, IPR2017-01598, Paper 42 (Notice of Stipulation and Proposed Order).

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Petitioner maintained its request, the Board was inclined to proceed with the oral hearing on Sept. 18 as scheduled. If the oral hearing did so proceed, counsel for Patent Owner expressed uncertainty whether they would appear at the hearing. Although the Board informed counsel that it would not penalize Patent Owner if its counsel elected not to appear at the oral hearing, the Board indicated that it would allow Petitioner to make its oral arguments on an *ex parte* basis, after which the hearing would conclude.

Petitioner was instructed to inform the Board by Sept. 13 whether, in fact, Petitioner wanted to maintain its request and proceed with the oral hearing. Petitioner has now informed the Board via email (copying Patent Owner's counsel) that Petitioner is maintaining its request for oral hearing. Petitioner's request for oral hearing is *granted* as provided below.

Time and Format

Oral argument will begin at **1:00 PM Eastern Time on September 18, 2018**, on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, Virginia. The Board was not able to accommodate Petitioner's request (*see, e.g.*, IPR2017-01598, Paper 37, 3) that the argument be held in Hearing Room A and, accordingly, the hearing will be held in **Hearing Room B**. The hearing will be open to the public for in-person attendance, which will be accommodated on a first come, first served basis.

Each side will have a total of 60 minutes to present its arguments related to all three petitions. Petitioner will open the hearing and may present arguments regarding the challenged claims for which the Board instituted trial and its Motion(s) to Exclude. Patent Owner will then be

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given an opportunity to respond to Petitioner's arguments. Petitioner and Patent Owner may each reserve up to 20 minutes of rebuttal time and sur-rebuttal time respectively for arguments presented during the hearing.³

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. There will be only one transcript, which will be entered into each case. If an argument is not applicable to all cases, the presenter should clearly state which case the argument is directed to.

Demonstratives

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). Notwithstanding 37 C.F.R. § 42.70(b), each party shall, instead of filing, provide a courtesy copy of the demonstrative exhibits to the Board at least three full business days prior to the hearing by emailing them to Trials@uspto.gov.

Any argument presented in the demonstrative exhibits must be supported by evidence already of record. The demonstrative exhibits, however, are not evidence. Instead, they are intended to assist the parties in presenting their oral arguments to the Board. Also, the demonstrative exhibits are not a mechanism for making arguments not previously presented. The panel will not consider arguments or evidence appearing only in demonstrative exhibits. The parties are directed to *St. Jude Medical*,

³ As indicated in the Board's Order dated July 20, 2018 (*see, e.g.*, IPR2017-01598, Paper 30), the parties will also be permitted to argue during this phase of the hearing that certain argument and/or evidence should or should not be considered in these proceedings under 37 C.F.R. § 42.23(b).

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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.

Due to the nature of the demonstrative exhibits, the panel does not anticipate that objections to such exhibits would likely be sustained. Nevertheless, to the extent that there is any objection to the propriety of the demonstrative exhibits, the parties shall meet and confer in good faith to resolve any issue. If the parties cannot resolve the issues regarding the demonstrative exhibits on their own, the objecting party may file a one-page list of its objections to the demonstrative exhibits with the Board at least three full business days before the hearing. The objecting party should identify with particularity which portions of the demonstrative exhibits it objects to, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. The panel will schedule a conference call if necessary. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

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. When introducing a demonstrative slide relating to information subject to a motion to exclude or strike or other objection, counsel will briefly note that status on the oral record.

Lead Counsel

Except as provided herein, the Board expects lead counsel for each party presenting arguments to be present at the oral hearing, although any

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