

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AUROBINDO PHARMA USA, INC.  
Petitioner,

v.

ANDRX CORPORATION,  
ANDRX LABORATORIES, INC.  
ANDRX LABORATORIES (NJ), INC.  
ANDRX EU LTD.  
ANDRX PHARMACEUTICALS, LLC,  
TEVA PHARMACEUTICAL INDUSTRIES LTD.  
Patent Owner(s).

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Case IPR2017-01648  
Patent 6,866,866 B1

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Before SUSAN L.C. MITCHELL, TINA E. HULSE, and  
DEVON ZASTROW NEWMAN, *Administrative Patent Judges*.

NEWMAN, *Administrative Patent Judge*.

ORDER  
Trial Hearing  
*37 C.F.R. § 42.70*

The Scheduling Order for this proceeding provided that an oral hearing would be conducted if the hearing is requested by the parties and granted by the Board. Paper 15. Patent Owner and Petitioner each requested oral hearing pursuant to 37 C.F.R. § 42.70. Papers 28, 29. The requests are *granted*.

Each party will have forty-five (45) minutes of total time to present argument. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue are unpatentable. Thus, Petitioner will open the hearing by presenting its case regarding the challenged claims for which we instituted trial. Petitioner may reserve some, but not more than one-half, of its argument time for rebuttal. Thereafter, Patent Owner will respond to Petitioner's presentation.

The hearing will commence at 1:00 PM Eastern Time on Monday, September 24, 2018, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia 22314. The oral argument will be open to the public for in-person attendance, which will be accommodated on a first-come, first-served basis.<sup>1</sup> The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing and will be entered in the record.

Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven (7) business days before the hearing date. The parties also shall provide the demonstrative exhibits to the Board at least *two*

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<sup>1</sup> The oral hearing is currently scheduled to occur in Hearing Room D, which has few publicly available spaces. The daily schedule will reflect any changes in location.

business days prior to the hearing by emailing them to [Trials@uspto.gov](mailto:Trials@uspto.gov). Despite the requirement in § 42.70(b) for parties to file demonstratives, the parties shall *not* file any demonstrative exhibits in this case without prior authorization from the Board. A hard copy of the demonstratives should be provided to the panel and court reporter at the hearing.

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), 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, but if such objections cannot be resolved, the parties may file any objections to demonstratives with the Board at least two business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection and include a one-sentence statement of the reason 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. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

The parties are advised that at least one member of the panel will be attending the hearing from a remote location. 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 avoid confusion and ensure the clarity and accuracy of the reporter's transcript and the ability of the judge(s) participating remotely to follow the

presenter's arguments. The parties should note that the remote judge(s) will not be able to see what is projected on the screen in the hearing room.

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.

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. The Board acknowledges the parties' requests for audio-visual equipment at the hearing, and instructs that the parties additionally notify [Trials@uspto.gov](mailto:Trials@uspto.gov) of the requests five (5) days in advance of the hearing date. Any requests not sent specifically to that email address will not be considered timely. If the request is not received timely, the equipment may not be available on the day of the hearing.

IPR2017-01648  
Patent 6,866,866 B1

PETITIONER:

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Hans Peter Hoffmann  
Alan Gardner

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