

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEPTUNE GENERICS LLC
Petitioner,

v.

CORCEPT THERAPEUTICS, INC
Patent Owner.

Case IPR2018-01494
Patent 8,921,348 B2

Before TINA E. HULSE, ROBERT A. POLLOCK and DAVID COTTA,
Administrative Patent Judges.

COTTA, *Administrative Patent Judge.*

ORDER
Oral Hearing
37 C.F.R. § 42.70

Pursuant to 37 C.F.R. § 42.70 and the Board's Scheduling Order (Paper 12), Neptune Generics LLC ("Petitioner") and Corcept Therapeutics, Inc. ("Patent Owner") have each requested an oral hearing for the above-captioned proceeding. Paper 31, 1; Paper 32, 1. The requests for oral argument are *granted*, subject to the terms and conditions set forth below. Oral arguments will commence at 1:00 PM Eastern Time on November 19, 2019, on the 9th floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

The Board ordinarily provides an hour of argument per side for a single proceeding. *See* Trial Practice Guide Update (Aug. 2018), 19. Petitioner requests that it be given sixty (60) minutes to present its arguments. Paper 32, 2. Patent Owner requests that it be given ninety (90) minutes, but offers no explanation for why it needs an additional 30 minutes of oral argument. Paper 31, 1. Given that the hearing is for a single proceeding regarding seven claims, we see no reason to deviate from the standard one hour of argument. Thus, each party will have sixty (60) minutes of total time to present their arguments. Petitioner bears the ultimate burden of proof to show that the patent claims at issue are unpatentable. Therefore, Petitioner will open the hearing by presenting its case regarding the challenged claims for which we instituted trial. Petitioner may reserve some of its argument time for rebuttal. Patent Owner will then respond to Petitioner's arguments. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Lastly, Patent Owner may use any time it has reserved for sur-rebuttal to respond to Petitioner's arguments made during rebuttal.

The Board will provide a court reporter for the hearing and the reporter's transcript shall 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. The record does not contain information designated as confidential. Accordingly, neither party is authorized to disclose confidential information during the hearing, which shall remain open to the public for its duration.

Demonstrative exhibits are not evidence sufficient to prove underlying facts, but, rather, serve as visual aids to facilitate the presentation of argument at an oral hearing. *See Duncan v. Dep't of the Air Force*, 674 F.3d 1359, 1363 (Fed. Cir. 2012) (discussing the nature and proper purpose of demonstrative exhibits). Demonstrative exhibits must not include new evidence and each must include citations to the record sufficient to establish that the exhibit contains no new argument or evidence not already of record in the proceeding(s) in which it is offered. The parties are directed to serve demonstrative exhibits on opposing counsel at least five (5) business days before the hearing date. The parties shall also provide a courtesy copy of any demonstrative exhibits to the Board at least three (3) business days prior to the hearing by emailing them to Trials@uspto.gov. **The parties shall not file demonstrative exhibits in the record of these proceedings.** Each party shall provide a hard copy of its demonstrative exhibits to the court reporter at the hearing.

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 demonstrative exhibits with the Board at least three (3) 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 demonstratives are subject to objection and include a short (one 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 call if deemed necessary. Otherwise, the Board will reserve ruling on the objections until the oral argument. The parties are directed to *St. Jude Medical, 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.

The parties should be prepared for the possibility that at least one member of the panel may attend the hearing electronically from a remote location and may not be able to view the projection screen in the hearing room. Any demonstrative exhibit that cannot be made available or visible to the judge(s) presiding remotely should not be presented during the hearing. Counsel 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 for the benefit of the judge(s) presiding over the hearing remotely.

The Board expects lead counsel for each party to be present in person. However, any counsel of record may present the party's argument. If either party expects that its lead counsel will not attend the hearing, the parties should initiate a joint telephone conference with the Board no later than two (2) business days prior to the date of the hearing to discuss the matter.

A party may request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. The available locations include the Texas Regional Office in Dallas, Texas; the Rocky Mountain Regional Office in Denver, Colorado; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the Silicon Valley Office in San Jose, CA. To request remote video viewing, a party must send an email message to Trials@uspto.gov ten business days prior to the hearing, indicating the requested location and the number planning to view the hearing from the remote location. The Board will notify the parties if the request for video viewing is granted. Note that it may not be possible to grant the request due to the availability of resources.

Both parties request permission to use certain audio/visual equipment to display exhibits during the oral hearing. Paper 31, 1; Paper 32, 3. Those requests, and any other special requests for audiovisual 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 (5) before the hearing, directed to the above email address.

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