

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX INC.,
Petitioner,

v.

UCB BIOPHARMA SPRL,
Patent Owner.

IPR2019-00400
Patent 8,633,194 B2

Before ROBERT A. POLLOCK, RYAN H. FLAX, and
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

POLLOCK, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

We instituted *inter partes* review in the instant proceeding on July 15, 2019. Paper 17. The Revised Scheduling Order for this proceeding sets the date for oral argument as April 22, 2020, if requested by the parties and granted by the Board. Paper 21, 9. On March 5, 2020, Petitioner and Patent Owner filed requests for oral argument. Paper 39; Paper 40. The parties' requests for oral argument are *granted*.

Oral argument shall commence at 1:00 p.m. Eastern Time on April 22, 2020, at the USPTO Headquarters in Hearing Room A, located on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. The parties are directed to contact the Board at least 10 days in advance of the hearing if there are any concerns about disclosing confidential information. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. To facilitate planning, each party must send an email message to PTABHearings@uspto.gov five days prior to the hearing if the number planning to attend the hearing in-person for its side (attorneys and others) exceeds five people.

Each party shall have 60 minutes of total time to present arguments. Petitioner will open the hearing by presenting its case regarding the unpatentability of the challenged claims. Patent Owner then will respond to Petitioner's presentation. Petitioner may reserve rebuttal time (of no more than half their total presentation time) to reply to Patent Owner's arguments. Patent Owner may reserve sur-rebuttal time (of no more than half its total presentation time) to respond to Petitioner's rebuttal. *See Office*

Consolidated Trial Practice Guide, November 2019 Edition, 83, available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>; *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019).

The parties are reminded that under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been filed. Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing date. Thus, the parties shall serve on opposing counsel demonstrative exhibits no later than April 13, 2020. Notwithstanding 37 C.F.R. § 42.70(b), demonstratives should be filed at the Board than no later than April 22, 2020 to facilitate the panel's preparation. A hard copy of the demonstrative exhibits should be provided to the court reporter at the oral argument. The parties should consider the information regarding demonstrative materials discussed in the *Office Consolidated Trial Practice Guide*, available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

We remind the parties that demonstrative exhibits are not evidence and should be labeled accordingly (e.g., “DEMONSTRATIVE – NOT EVIDENCE”), but are intended to assist the parties in presenting their oral arguments to the Board. We also remind the parties that demonstrative exhibits are not a mechanism for making arguments not previously addressed in the papers. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018). The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance

regarding the appropriate content of demonstrative exhibits, which must include citations to the record.

To the extent that the parties object to the propriety of any demonstrative exhibits, we expect the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If such objections cannot be resolved, the parties may file objections to demonstratives with the Board at least two business days before the oral argument. The objections should identify with particularity the portions of each demonstrative exhibit subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No further argument or explanation is permitted. We will consider any objections and schedule a conference call if deemed necessary. Otherwise, we will reserve ruling on the objections until after the oral argument. Any objection to demonstrative exhibits that is not timely presented will be considered waived. During the oral argument, 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. No live witness testimony shall be taken at the oral argument.

Either party may request a pre-hearing conference. *Office Consolidated Trial Practice Guide*, 82. Requests for a pre-hearing conference must be made by April 7, 2020. To request such a conference, an email should be sent to Trials@uspto.gov including several dates and times of availability for one or both parties, as appropriate, that are generally

no later than three business days prior to the oral hearing. Please refer to the Guide for more information on the pre-hearing conference.

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 as long as that counsel is present in person.

A party may request that counsel be permitted to present arguments remotely from an alternative 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 that counsel be permitted to present arguments from a remote location, a party should send an email message to PTABHearings@uspto.gov at least ten business days or as soon as practical prior to the hearing and provide a short statement of reasons for the request. The Board will notify the parties if the request is approved. Approval of the request does not guarantee that a panel member will be present at the remote location.

A party may also request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. To request remote video viewing, a party must send an email message to PTABHearings@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.

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