

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BLUEBIRD BIO, INC.,  
Petitioner,

v.

SLOAN KETTERING INSTITUTE FOR CANCER RESEARCH,  
Patent Owner.

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IPR2023-00070 (Patent 7,541,179 B2)  
IPR2023-00074 (Patent 8,058,061 B2)<sup>1</sup>

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Before SHERIDAN K. SNEDDEN, JAMES A. WORTH and  
CYNTHIA M. HARDMAN, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

ORDER  
Setting Oral Argument  
*37 C.F.R. § 42.70*

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<sup>1</sup> This Order addresses overlapping issues in each of the above-captioned proceedings. Therefore, we issue one Order to be filed in each case. The parties are not authorized to use this caption unless authorized by the Board.

IPR2023-00070 (Patent 7,541,179 B2)

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## I. ORAL ARGUMENT

Petitioner and Patent Owner both request oral argument. Paper 39 (Petitioner's Request), Paper 40 (Patent Owner's Request).<sup>2</sup> The parties' requests for oral argument are granted.

### *A. Time and Format*

Oral arguments will commence at **9:00 AM Eastern Time** on **January 24, 2024**, at the USPTO Headquarters in Alexandria, VA in Hearing Room A.<sup>3,4</sup> The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Petitioner will have a total of ninety (90) minutes to present argument in this case and Patent Owner will have a total of ninety (90) minutes to respond. Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. Thereafter, Patent Owner will respond to Petitioner's argument. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. In accordance with the Consolidated Trial Practice Guide<sup>5</sup> ("CTPG"), issued in

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<sup>2</sup> For purposes of expediency, we cite to Papers and Exhibits filed in IPR2023-00070, unless otherwise indicated. The parties filed similar Papers in IPR2023-00074.

<sup>3</sup> The U.S. Patent and Trademark Office ("USPTO") is concerned with the health and safety of all of its stakeholders, and will continue to follow all applicable health guidance. Prior to arriving at any USPTO office location, please consult the following to verify entry requirements:

<https://www.uspto.gov/coronavirus>.

<sup>4</sup> If there are any concerns about disclosing confidential information, the parties must contact the Board at [Trials@uspto.gov](mailto:Trials@uspto.gov) at least ten (10) business days before the hearing date.

<sup>5</sup> Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

IPR2023-00070 (Patent 7,541,179 B2)

IPR2023-00074 (Patent 8,058,061 B2)

November 2019, Patent Owner may request to reserve time for a brief sur-rebuttal. *See* CTPG 83.

The parties may request a pre-hearing conference in advance of the hearing. *See id.* at 82. “The purpose of the pre-hearing conference is to afford the parties the opportunity to preview (but not argue) the issues to be discussed at the hearing, and to seek the Board’s guidance as to particular issues that the panel would like addressed by the parties.” *Id.* If either party desires a pre-hearing conference, the parties should jointly contact the Board at [Trials@uspto.gov](mailto:Trials@uspto.gov) at least seven (7) business days before the hearing date to request a conference call for that purpose.

#### *B. Demonstratives*

As set forth in 37 C.F.R. § 42.70(b), demonstratives shall be served on opposing counsel at least seven (7) business days before the hearing date.<sup>6</sup> In place of the default filing date provided in § 42.70(b), the parties shall file demonstrative exhibits no later than one (1) business day before the hearing to allow the panel sufficient time to review the materials.

Demonstratives are not a mechanism for making new arguments. Demonstratives also are not evidence, and will not be relied upon as evidence. Rather, demonstratives are visual aids to a party’s oral presentation regarding arguments and evidence previously presented and discussed in the papers. Accordingly, demonstratives shall be clearly marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. *See Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364,

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<sup>6</sup> The parties may stipulate to an alternative schedule for serving demonstratives.

IPR2023-00070 (Patent 7,541,179 B2)

IPR2023-00074 (Patent 8,058,061 B2)

1369 (Fed. Cir. 2018) (holding that the Board is obligated under its own regulations to dismiss untimely argument “raised for the first time during oral argument”). “[N]o new evidence may be presented at the oral argument.” CTPG 85; *see also St. Jude Med., Cardiology Div., Inc. v. The Bd. of Regents of the Univ. of Mich.*, IPR2013-00041, Paper 65, 2–3 (PTAB Jan. 27, 2014) (explaining that “new” evidence includes evidence already of record but not previously discussed in any paper of record).

Furthermore, because of the strict prohibition against the presentation of new evidence or arguments at a hearing, it is strongly recommended that each demonstrative include a citation to a paper in the record, which allows the Board to easily ascertain whether a given demonstrative contains “new” argument or evidence or, instead, contains only that which is developed in the existing record.

Due to the nature of the Board’s consideration of demonstratives and the opportunity afforded for the parties to reach an agreement without involving the Board, the Board does not anticipate that objections to demonstratives are likely to be sustained. Nevertheless, to the extent that a party objects to the propriety of any demonstrative, the parties shall meet and confer in good faith to resolve any objections to demonstratives prior to filing the objections with the Board. If such objections cannot be resolved, the parties may file any objections to demonstratives with the Board no later than the time of the hearing. The objections shall identify with particularity which portions of the demonstratives are subject to objection (and should include a copy of the objected-to portions) and include a one (1) sentence statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider any objections, and may

IPR2023-00070 (Patent 7,541,179 B2)

IPR2023-00074 (Patent 8,058,061 B2)

reserve ruling on the objections.<sup>7</sup> Any objection to demonstratives that is not timely presented will be considered waived.

Finally, the parties are reminded that each presenter should identify clearly and specifically each paper (e.g., by slide or screen number for a demonstrative) referenced during the hearing to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically.

### *C. Presenting Counsel*

The Board generally expects lead counsel for each party to be present at the hearing. *See* CTPG 11. Any counsel of record may present the party's argument as long as that counsel is present in person.

### *D. Remote Attendance Requests*

Members of the public may request to listen to and/or view this hearing. If resources are available, the Board generally expects to grant such requests. If either party objects to the Board granting such requests, for example, because confidential information may be discussed, the party must notify the Board at [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov) at least seven (7) business days prior to the hearing date.

### *E. Audio/Visual Equipment Requests*

Any special requests for audio-visual equipment should be directed to [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov). A party may also indicate any special requests related to appearing at a video hearing, such as a request to accommodate deaf or hard-of-hearing individuals and blind or low vision individuals, and

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<sup>7</sup> If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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