

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GRÜNENTHAL GMBH,
Petitioner,

v.

ANTECIP BIOVENTURES II LLC,
Patent Owner.

Case PGR2018-00001
Patent 9,539,268 B2

Before TONI R. SCHEINER, GRACE KARAFFA OBERMANN, and
SHERIDAN K. SNEDDEN, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

Patent Owner and Petitioner request an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 41, 43. Patent Owner requests forty-five (45) minutes of total time to present argument. Paper 41, 2. Petitioner requests sixty (60) minutes of total time to present argument. Paper 43, 1. The requests are *granted* to the extent set forth below and subject to the following conditions.

Oral argument shall commence at 1:00 PM Eastern Time on February 7, 2019, on the 9th floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Each party will have sixty (60) minutes of total time to present argument. Petitioner bears the ultimate burden of proof 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. Thereafter, Patent Owner will respond to Petitioner's presentation and present the issues for which it bears the ultimate burden. Patent Owner may also reserve some of its argument time for rebuttal. To the extent Petitioner reserves rebuttal time, Petitioner then may make use of its rebuttal time responding to Patent Owner. To the extent Patent Owner reserves rebuttal time, Patent Owner then may make use of its rebuttal time responding to Petitioner.

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. If the parties have any concern about disclosing confidential information, they are requested to contact the Board at least five (5) days in advance of the hearing to discuss the matter.

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. Please also provide a courtesy copy of any demonstrative exhibits to the Board at least five (5) business days prior to the hearing by emailing them to Trials@uspto.gov. **The parties are directed to refrain from filing demonstrative exhibits in the record of this proceeding.**

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 two (2) 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. If a demonstrative exhibit is not made available or visible to the judge(s) presiding over the hearing remotely, that demonstrative will not be considered. 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.

No live testimony from any witness will be taken at the oral argument. 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 attend the oral hearing, the parties should initiate a joint telephone conference with the Board no later than two (2) business days prior to the oral hearing to discuss the matter.

Per the recent update to the Office Patent Trial Practice Guide, either party may request a pre-hearing conference (Office Patent Trial Practice Guide, August 2018 Update, 83 Fed. Reg. 39,989 (Aug. 13, 2018) (found at the following link to the USPTO website: <https://go.usa.gov/xU7GP>)). Requests for a pre-hearing conference must be made by January 18, 2019. 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 prehearing conference.

Both parties request permission to use certain audio/visual equipment to display exhibits during the oral hearing. Paper 41, 2; Paper 43, 1. 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 before the hearing, directed to the above email address.

It is

ORDERED that the parties' requests for oral hearing are *granted* subject to the conditions set forth in this Order; and

FURTHER ORDERED that oral hearing, conducted pursuant to the procedures outlined above, shall commence at 1:00 PM Eastern Time on February 7, 2019.

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