

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CYANOTECH CORPORATION  
Petitioner

v.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS  
Patent Owner

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Cases IPR2013-00401 and IPR2013-00404 (consolidated)  
Patent 5,527,533

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Before SCOTT E. KAMHOLZ, SHERIDAN K. SNEDDEN, and  
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

KAMHOLZ, *Administrative Patent Judge*.

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

Cyanotech and the University requested oral argument. Papers 45, 46. The University also requested that the oral argument be rescheduled from July 16,

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2014, as set in the Scheduling Order on December 19, 2013 (Paper 18), because its lead and backup counsel have a conflicting trial in an unrelated district court litigation. Paper 45, 2.\*

Oral argument will commence at 2:00 pm Eastern Time on July 16, 2014, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Each party is allotted one hour total argument time.

For each case, Cyanotech ultimately bears the burden of proof that the University's claims are unpatentable. Cyanotech will open the hearing by presenting its arguments regarding the challenged claims for which the Board instituted trial. The University will then respond to Cyanotech's arguments. Cyanotech may reserve rebuttal time to respond to arguments presented by the University. The University may not reserve rebuttal time.

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. The final hearing will be publically available via in-person attendance. 37 C.F.R. § 42.14. Attendance by the public will be accommodated on a first-come, first-served basis.

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 in accordance with our rules. Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least five business days before the hearing. The Board requests that such exhibits be filed at the Board at least five business days before the hearing. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014)

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\* A copy of the trial order from the district court is attached to the request. The order is dated May 29, 2014 and adjourns trial to July 14, 2014.

(Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties must initiate a conference call with the Board at least two business days before the hearing to present any objection regarding the propriety of any demonstrative exhibit. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The Board asks the parties to confine demonstrative exhibit objections to those identifying egregious violations that are prejudicial to the administration of justice.

The parties are reminded that, during the hearing, the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced to ensure the clarity and accuracy of the reporter's transcript.

The Board expects lead counsel for each party to be present in person at the hearing. If a party anticipates 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. Any counsel of record, however, may present the party's argument. A party's argument may be divided, but interruptions for change of counsel should be kept to a minimum.

A screen and computer projector will be provided for counsels' use during the hearing. Any special requests for audio visual equipment should be directed to [Trials@uspto.gov](mailto:Trials@uspto.gov). Requests for special equipment will not be honored unless presented in a separate communication directed to the above email address not less than five days before the hearing.

The parties should note that one member of the panel is expected to attend the oral hearing electronically from a remote location.

The University's request to change the date of oral argument is denied. We are mindful of the University's preference for certain counsel to present oral

argument. The Board's hearing room schedule, as well as the schedules of the judges empaneled for this proceeding, are not amendable, however, to rescheduling at this late date. Moreover, this proceeding is conducted on a strict statutory timeline and cannot deviate from the set schedule without risking failure to complete it on time. Consequently, modification of the oral argument date will be made only for good cause. The University provides no explanation for its request other than to state its counsels' conflicting trial date. The University does not explain what efforts it undertook with the district court to schedule around the hearing date for this proceeding, of which the University has been aware since December 19, 2013. *See* Paper 18, 6. Nor does the University indicate that Cyanotech joins its request. If the University believes that good cause nevertheless exists to change the hearing date, it may request, no later than June 20, 2014, a conference call with the Board to seek authorization to file a motion to change Due Date 7. The University is reminded that, even if its filing is authorized, the motion will not be granted without a showing by the University that it is entitled to the requested relief. *See* 37 C.F.R. § 42.20(c).

Accordingly, it is

ORDERED that oral argument in the cases listed in the caption of this order shall take place beginning at 2:00 pm Eastern Time on July 16, 2014, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria; and

FURTHER ORDERED that the University's request to reschedule the oral argument is *denied* without prejudice to its requesting, no later than June 20, 2014, a conference call to seek authorization to file a motion to reset Due Date 7.

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