

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIODELIVERY SCIENCES INTERNATIONAL, INC.,
Petitioner,

v.

RB PHARMACEUTICALS LIMITED,
Patent Owner.

Case IPR2014-00325
Patent 8,475,832

Before TONI R. SCHEINER, JACQUELINE WRIGHT BONILLA, and
ZHENYU YANG, *Administrative Patent Judges*.

BONILLA, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On January 28, 2015, a conference call was conducted between respective counsel for the parties and Judges Scheiner, Bonilla, and Yang. The purpose of the call was to address Petitioner's request, by e-mail correspondence sent to the Board and parties on January 26, 2015, of five additional pages for its reply to Patent Owner's Response. In its e-mail, Petitioner requested additional pages on the basis that "Patent Owner presents inconsistent and shifting positions on claim construction, and relies on 50 new exhibits, including their own documents which contradict their arguments." *See* attached.

As stated during the call, Petitioner contends that "unusual circumstances" exist here because (1) Patent Owner's expert rejects Patent Owner's data in certain instances, but relies on it in other instances; (2) Patent Owner cites 50 new exhibits in its Response; and (3) Patent Owner's expert appears to agree with the Board's claim construction in certain instances, but relies on different claim construction in other instances. Patent Owner opposes any extra pages in the reply, responding that the issues raised by Petitioner are not unusual, but rather normal advocacy positions raised by an opposing party.

As explained during the call, we do not grant Petitioner additional pages in its reply. We are not persuaded that extra pages are justified in this instance. We agree with Patent Owner that the "circumstances" presented by Petitioner correspond to the type of positions one might expect to present, or respond to, in a reply.

Accordingly, it is

ORDERED that Petitioner's request for five additional pages for its reply is denied.

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From: Herritt, Danielle [<mailto:dherritt@mccarter.com>]
Sent: Monday, January 26, 2015 1:17 PM
To: Trials
Cc: Bollinger, James Moore; Ladow, Daniel A.; 'Essunger, Magnus'; IPR832
Subject: IPR2014-00325 - Request for Telephone Conference

Dear Mr. Patrick E. Baker,

We request a telephone conference this afternoon with the Board to request 5 additional pages for Petitioner's Reply due this Friday, January 30, 2015. Patent Owner presents inconsistent and shifting positions on claim construction, and relies on 50 new exhibits, including their own documents which contradict their arguments. We believe the Board will benefit from the additional briefing to identify Patent Owner's inconsistency.

Counsel for Patent Owner has indicated they are available this afternoon and tomorrow.

Sincerely,
Danielle Herritt



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