

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHIGENIX, INC.,
Petitioner,

v.

IMMUNOGEN, INC.,
Patent Owner.

Case IPR2014-00676
Patent 8,337,856 B2

Before FRANCISCO C. PRATS, JACQUELINE WRIGHT BONILLA, and
ZHENYU YANG, *Administrative Patent Judges*.

BONILLA, *Administrative Patent Judge*.

SCHEDULING ORDER

A. INITIAL CONFERENCE CALL

An initial conference call with the Board is scheduled for 2:00 PM Eastern Time on December 2, 2014.

B. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. The parties may not stipulate to an extension of DUE DATES 6 and 7.

In stipulating to different times, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to file papers relying on the evidence and cross-examination testimony (*see* section B, below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (Appendix D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorney fees incurred by a party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

1. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

Any such response or motion to amend by the patent owner must be filed by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any argument for patentability not raised and fully briefed in the response will be deemed waived.

2. DUE DATE 2

The petitioner may file a reply to the patent owner's response and an opposition to the patent owner's motion to amend. Any such filing must be made by DUE DATE 2.

3. DUE DATE 3

The patent owner may file a reply to the petitioner's opposition to patent owner's motion to amend. Any such filing must be made by DUE DATE 3.

4. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (see section C, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

5. DUE DATE 5

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

6. DUE DATE 6

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

7. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE 7.

C. CROSS-EXAMINATION

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due.
37 C.F.R. § 42.53(d)(2).

2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

D. MOTION FOR OBSERVATION ON CROSS-EXAMINATION

A motion for observation on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

DUE DATE APPENDIX

DUE DATE 1.....	January 22, 2014
Patent owner’s response to the petition	
Patent owner’s motion to amend the patent	
DUE DATE 2.....	April 16, 2014
Petitioner’s reply to Patent Owner’s response to petition	
Petitioner’s opposition to Patent Owner’s motion to amend	
DUE DATE 3.....	May 14, 2014
Patent Owner’s reply to Petitioner’s opposition to Patent Owner’s motion to amend	
DUE DATE 4.....	June 4, 2014
Petitioner’s motion for observation regarding cross-examination of reply witness	
Motion to exclude evidence	
Request for oral argument	
DUE DATE 5.....	June 18, 2014
Patent Owner’s response to observation	
Opposition to motion to exclude evidence	
DUE DATE 6.....	June 25, 2014
Reply to opposition to motion to exclude evidence	
DUE DATE 7.....	July 9, 2014
Oral argument (if requested)	

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