

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRAXAIR DISTRIBUTION, INC.,
Petitioner,

v.

INO THERAPEUTICS LLC,
Patent Owner.

Case IPR2015-00884 (Patent 8,291,904 B2)
Case IPR2015-00888 (Patent 8,776,794 B2)
Case IPR2015-00889 (Patent 8,573,209 B2)
Case IPR2015-00891 (Patent 8,573,210 B2)
Case IPR2015-00893 (Patent 8,776,795 B2)¹

Before KEN B. BARRETT, MICHAEL J. FITZPATRICK, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

SCHEDULING ORDER

¹ This Order employs a joint caption, as it is being entered in each of the five identified proceedings. The parties may not use a joint caption unless authorized.

IPR2015-00884
IPR2015-00888
IPR2015-00889
IPR2015-00891
IPR2015-00893

Patent 8,291,904 B2
Patent 8,776,794 B2
Patent 8,573,209 B2
Patent 8,573,210 B2
Patent 8,776,795 B2

A. 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 draft papers depending 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) as 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 attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

1. INITIAL CONFERENCE CALL

The parties are directed to contact the Board within three weeks of this Scheduling Order if there is a need to discuss proposed changes to the schedule or proposed motions. *See* Office Patent Trial Practice Guide,

IPR2015-00884
IPR2015-00888
IPR2015-00889
IPR2015-00891
IPR2015-00893

Patent 8,291,904 B2
Patent 8,776,794 B2
Patent 8,573,209 B2
Patent 8,573,210 B2
Patent 8,776,795 B2

77 Fed. Reg. at 48,765–66 (guidance in preparing for the initial conference call).

2. 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).

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

3. DUE DATE 2

The petitioner must file any reply to the patent owner’s response and opposition to the motion to amend by DUE DATE 2.

4. DUE DATE 3

The patent owner must file any reply to the petitioner’s opposition to patent owner’s motion to amend by DUE DATE 3.

5. 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.

IPR2015-00884
IPR2015-00888
IPR2015-00889
IPR2015-00891
IPR2015-00893

Patent 8,291,904 B2
Patent 8,776,794 B2
Patent 8,573,209 B2
Patent 8,573,210 B2
Patent 8,776,795 B2

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.

6. 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.

7. DUE DATE 6

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

8. DUE DATE 7

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

B. 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.*

IPR2015-00884
IPR2015-00888
IPR2015-00889
IPR2015-00891
IPR2015-00893

Patent 8,291,904 B2
Patent 8,776,794 B2
Patent 8,573,209 B2
Patent 8,573,210 B2
Patent 8,776,795 B2

C. 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. at 48,768. 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.

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