

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INNOPHARMA LICENSING, INC., INNOPHARMA LICENSING LLC,
INNOPHARMA INC., INNOPHARMA LLC,
MYLAN PHARMACEUTICALS INC., and MYLAN INC.,
Petitioner,

v.

SENJU PHARMACEUTICAL CO., LTD., BAUSCH & LOMB, INC., and
BAUSCH & LOMB PHARMA HOLDINGS CORP.,
Patent Owner.

Case IPR2015-00902 (Patent 8,669,290 B2)
Case IPR2015-00903 (Patent 8,129,431 B2)¹

Before FRANCISCO C. PRATS, ERICA A. FRANKLIN, and
GRACE KARAFFA OBERMANN, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

HEARING ORDER
Request for Oral Argument
37 C.F.R. § 42.70

¹ IPR2015-01871 has been joined with IPR2015-00903. This Order addresses issues common to all cases identified in the caption.

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The parties filed a joint request for an oral hearing pursuant to 37 C.F.R. § 42.70. Paper 61, 1.² The parties request a consolidated hearing for these proceedings, “which involve some common parties and related patents.” *Id.* We grant the parties’ request for an oral hearing of “two hours total” in duration, subject to the following conditions. *Id.*

The hearing will commence at 10:00 AM Eastern Standard Time on April 19, 2016, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, VA. The Board will provide a court reporter for the hearing, and the transcript will constitute the official record of the hearing.

Each party shall have 60 minutes of total argument time. Petitioner bears the ultimate burden of proof that the patent claims at issue are unpatentable. Petitioner will proceed first and, pursuant to the parties’ agreement, shall have 45 minutes to present its case with regard to the challenged claims. *Id.* at 2–3. Patent Owner shall then have 60 minutes to respond to Petitioner’s case. After that, Petitioner shall have 15 minutes of rebuttal time to reply to Patent Owner’s arguments. Any argument or evidence presented by a party at the consolidated oral hearing shall be applied only in a proceeding in which the record provides a proper foundation for such argument or evidence.

Patent Owner requests additional hearing time to present arguments relating to motions to exclude, whereas Petitioner does not believe that a hearing on such motions is necessary. *Id.* at 2. Either party is free to dedicate a portion of their allotted time to procedural issues, including motions to exclude and objections; however, no additional time shall be

² The requests filed in each proceeding are substantially identical. For convenience, we refer to the paper filed in IPR2015-00902.

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provided for those purposes. Petitioner is reminded that rebuttal time may not be used to raise new issues, but shall be limited strictly to responding to arguments raised and discussed by Patent Owner.

The oral hearing shall be open to the public for in-person attendance. To the extent that counsel for any party intends to present arguments related to information filed under seal, counsel shall not, at oral argument, reveal such sealed information. Instead, counsel shall make reference to such information without actually disclosing the information.

The parties both seek to reserve seats in the hearing room. *Id.* at 3. Due to hearing room scheduling constraints, however, the hearing room assigned to these proceedings may not have capacity to accommodate all twenty (20) anticipated attendees identified in the request. *Id.* In-person attendance shall be accommodated on a first-come, first-served basis.

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. *See also CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118) (The Board has discretion to limit the parties' demonstratives to pages in the record should there be no easy resolution to objections over demonstratives.).

Demonstrative exhibits, if any, must be served no later than five business days before the hearing. 37 C.F.R. § 42.70(b). The parties are instructed, however, to refrain from filing any demonstrative exhibits in these proceedings. The parties shall provide a courtesy copy of any

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demonstrative exhibits to the Board no later than two business days prior to the hearing by emailing them to Trials@uspto.gov.

The parties shall confer with each other regarding any objections to demonstrative exhibits in each proceeding. The parties are instructed to refrain from raising unreasonable objections to demonstrative exhibits. Specifically, the panel is capable of distinguishing evidence and arguments that are of record from those that are not. Any final decisions issued in these proceedings will incorporate only evidence and argument that are of record in these proceedings.

For any issue that cannot be resolved after conferring, the parties may file jointly a one-page list of objections at least three business days prior to the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one sentence) of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a telephone conference if deemed necessary.

Any objection to demonstrative exhibits that is not timely presented will be deemed waived. Neither party shall be permitted to interrupt their opponent's presentation to lodge objections to demonstrative exhibits during the oral hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

Questions regarding specific audio-visual equipment should be directed to the Board at 571-272-9797. Requests for audio-visual equipment are to be made no later than 5 days in advance of the hearing date. The request is to be sent directly to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the

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hearing. The parties are reminded that the presenter 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.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, lead or backup counsel may present the party's argument. If either party anticipates that its lead counsel will not be attending the oral hearing, 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.

It is

ORDERED that oral arguments in this proceeding shall take place beginning at 10:00 AM Eastern Standard Time on April 19, 2016, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

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