

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 GRACE KARAFFA OBERMANN, *Administrative Patent Judge*.

OBERMANN, *Administrative Patent Judge*.

SCHEDULING ORDER

¹ This order addresses issues common to both cases; therefore, we issue a single order to be entered in each case. The parties are authorized to use this style heading when filing an identical paper in both proceedings, provided that such heading includes a footnote attesting that “the word-for-word identical paper is filed in each proceeding identified in the heading.”

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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) (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 a month of this decision if there is a need to discuss proposed changes to this Scheduling Order or proposed motions. *See* Office Patent Trial Practice Guide, 77 Fed.

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Reg. 48,756, 48,765–66 (Aug. 14, 2012) (guidance in preparing for the initial conference call).

2. ADR STATEMENT

The parties are encouraged to discuss promptly alternative means for resolving their disputes regarding the subject matter of this proceeding. To advance the opportunities for early disposition, petitioner is encouraged to notify the Board, by the due date identified in the Appendix to this Order, that the parties have conferred regarding alternative dispute resolution and whether the parties have reached any agreements.

3. 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 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 arguments for patentability not raised in the response will be deemed waived.

4. 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.

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5. 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.

6. 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.

7. 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.

8. DUE DATE 6

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

9. DUE DATE 7

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

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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.*

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. 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.

D. MOTION TO AMEND

Under 37 C.F.R. §§ 42.24 and 42.121, a motion to amend, if filed in this proceeding, as well as petitioner's opposition to the motion to amend, each are limited to twenty-five (25) pages; patent owner's reply to the opposition to the motion to amend is limited to twelve (12) pages; and the

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