

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COALITION FOR AFFORDABLE DRUGS VIII, LLC,  
Petitioner,

v.

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA,  
Patent Owner.

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Case IPR2015-01835; Patent 8,618,135 B2  
Case IPR2015-01836; Patent 7,932,268 B2<sup>1</sup>

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Before MICHAEL P. TIERNEY, LORA M. GREEN, and  
GRACE KARAFFA OBERMANN, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

SCHEDULING ORDER

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<sup>1</sup> This order addresses issues that are the same in the identified cases. We exercise our discretion to issue one order to be filed in each case. The parties are authorized to use this style heading when filing a single paper in the listed 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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## **I. 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). In addition, any request for oral argument should be filed by original DUE DATE 4 as set forth in DUE DATE APPENDIX.

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.

### **A. 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

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Order or proposed motions. To request a conference call, the parties should submit a list of dates and times when they are available for a call. If an initial conference call is requested, the parties should be prepared to discuss any proposed changes to this Scheduling Order and any motions the parties anticipate filing during the trial. The parties are directed to the Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,765–66, for guidance in preparing for the initial conference call.

### **B. 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.

### **C. 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.

### **D. 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.

#### **E. DUE DATE 4**

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

2. 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.

#### **F. DUE DATE 5**

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

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

#### **G. DUE DATE 6**

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

#### **H. DUE DATE 7**

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

### **II. 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).

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