

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS V LLC;
HAYMAN CREDES MASTER FUND, L.P.;
HAYMAN ORANGE FUND SPC – PORTFOLIO A;
HAYMAN CAPITAL MASTER FUND, L.P.;
HAYMAN CAPITAL MANAGEMENT, L.P.;
HAYMAN OFFSHORE MANAGEMENT, INC.;
HAYMAN INVESTMENTS, LLC;
NXN PARTNERS, LLC;
IP NAVIGATION GROUP, LLC;
J KYLE BASS, and ERICH SPANGENBERG,
Petitioners,

v.

BIOGEN MA INC.,
Patent Owner.

Case IPR2015-01993
Patent 8,399,514 B2

Before FRED E. McKELVEY, *Administrative Patent Judge*.

SCHEDULING ORDER
Conduct of Proceedings
37 C.F.R. § 42.5(c)

I. Due Dates

This Scheduling Order sets due dates for taking action in the above-identified *inter partes* review trial. 37 C.F.R. § 42.5(c).

The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but not later than DUE DATE 6).

A notice of any stipulation, specifically identifying any changed due dates, must be promptly filed.

The parties may not stipulate to an extension of DUE DATES 6 and 7.

In stipulating to difference dates, the parties should consider the effect of the stipulation on the following times to:

- (1) objection to admissibility of evidence (37 C.F.R. § 42.64(b)(1));
- (2) serving supplemental evidence (37 C.F.R. § 42.64(b)(2));
- (3) conducting cross-examination (37 C.F.R. § 42.53(d)(2));
and
- (4) drafting papers depending on the evidence and cross-examination testimony (*see* Part V, below).

The Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48772 (Aug. 14, 2012) (Appendix D) apply to trials.

The parties should adhere strictly to the Testimony Guidelines. 37 C.F.R. § 42.12.

Unless agreed to by the parties, any redirect examination shall

proceed, without a recess, immediately after conclusion of cross-examination; “coaching” of a witness is not permitted. By proceeding directly to redirect after cross-examination will eliminate any possibility of coaching during a break between redirect and conclusion of cross-examination.

The following comments by defending counsel generally are viewed as suggesting an answer to (i.e., coaching,) a witness:

- (a) Objection, vague—not permitted.
- (b) Objection to the form of the question—not permitted.
- (c) Take your time in answering the question.
- (d) Look at the document before you answer.
- (e) Counsel, do you want to show the witness the document?

The following observation by Judge Gawthrop, in *Hall v. Clifton Precision*, 150 F.R.D. 525, 530 n.1 (E.D. Pa. 1993), is highly relevant:

I also note that a favorite objection or interjection of lawyers is, “I don't understand the question; therefore the witness doesn't understand the question.” This is not a proper objection. If the witness needs clarification, the witness may ask the deposing lawyer for clarification. A lawyer's purported lack of understanding is not a proper reason to interrupt a deposition. In addition, counsel are not permitted to state on the record their interpretations of questions, since those interpretations are irrelevant and often suggestive of a particularly desired answer.

II. Initial Conference Call

A. Guidance

The Trial Practice Guide, 77 Fed. Reg. at 48765–66 (*see E. Initial Conference Call (One Month After Instituting Trial)*), sets out guidance in

preparing for the initial conference call.

The parties should be prepared to discuss any proposed changes to this Scheduling Order and any motions the parties anticipate filing during the trial.

No later than **15 April 2016**, the parties shall file a list of proposed motions. 37 C.F.R. § 42.21(a); Trial Practice Guide, 77 Fed. Reg. at 48765 (col. 3).

B. Specific Matters

1.

The parties should be prepared to advise the Board whether the parties contemplate use of alternative dispute resolution procedures.

2.

Patent Owner should be prepared to advise the Board whether it intends to file a Motion to Amend.

3.

Patent Owner should be prepared to advise the Board if it intends to reply on unexpected results or “secondary considerations” in opposing any ground involving § 103(a) and the general nature of any proofs.

4.

Petitioner should be prepared to advise the Board if it intends to file any additional Petition to challenge patentability of any claim of the '210 patent.

5.

Patent Owner should be prepared to advise the Board whether it intends to rely on the filing date of its Provisional Application 60/888,921, filed 8 February 2007.

6.

Patent Owner should be prepared to advise the Board whether it intends to antedate any prior art relied upon by Petitioner where the prior art is not prior art under § 102(b), and if so, the nature of antedating proofs intended to be relied upon.

C. Other matters

1.

The parties are advised that when a document with a large number of pages, (e.g., a file wrapper) is offered in evidence, generally the only pages of the document that will be considered by the Board are the specific pages mentioned in a motion, opposition, or reply.

Pages of the large document not mentioned in a motion, opposition, or reply, or otherwise discussed in a written order by the Board, will not be considered as having been admitted into evidence.

2.

The style of any paper filed in the future shall not exceed one line.
See also Paper 16, page 2, n.2.

3.

Any evidence served in response to an objection to admissibility of evidence shall be filed with the Board upon being served.

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