

UNITED STATES PATENT AND TRADEMARK OFFICE

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;
KYLE BASS, and ERICH SPANGENBERG,
Petitioners,

v.

BIOGEN MA INC.,
Patent Owner.

Case IPR2015-01993
Patent 8,399,514 B2

Before RICHARD E. SCHAFER, *Administrative Patent Judge*.

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

The parties have each filed a list of proposed motions pursuant to the order entered March 22, 2016 (Paper 21). A conference call was scheduled for April 19, 2016, to discuss the proposed motions. Upon review of the lists, it was determined that a conference call was unnecessary.

Patent Owner (Biogen) has requested authorization to file two motions:

1. A motion to antedate “Kappos 2006” (Ex. 1003A) and
2. A motion to seal and for a protective order.

With respect to the motion to antedate, the request is authorized. The motion should be filed simultaneously with Biogen’s Patent Owner’s Response. The burden is on Biogen, as movant and/or proponent of an earlier date, to show entitlement to a date of invention earlier than Kappos 2006. Twenty-five (25) pages are authorized for the motion and any opposition and twelve (12) pages are authorized for any reply. To the extent that Patent Owner relies on diligence the Patent Owner shall present a diligence chart in the form of an exhibit. Any diligence chart must (1) list all days from the beginning of diligence through the end of diligence, (2) briefly state what happened on each day, and (3) cite the page and line of the motion on which the listed day is discussed. Every date gap in the diligence showing must be explained. The fact that there is a gap does not per se establish lack of reasonable diligence; and the fact that there is no gap does not per se establish reasonable diligence. In its merits response, Biogen should assume, *arguendo*, that its motion to antedate is denied, it being understood that if the motion to antedate is granted, the grounds based on the antedated prior art would no longer be viable. However, to present a complete decision the Board may find it appropriate to address the patentability merits assuming that in further proceedings it is determined that the motion to antedate should not have been granted.

A revised schedule, corresponding to the parties' previously stipulated schedule, is attached as an appendix.

Biogen also seeks to file a motion to seal confidential information or for a protective order. A motion to seal and for a protective order may be filed according to 37 C.F.R. § 42.14 and as set out in the Office Trial Practice Guide, 77 Fed. Reg. 48756, 48760-61, Part E.

Petitioner, Coalition for Affordable Drugs V LLC., et al. (CFAD) proposed three motions:

1. A motion to exclude certain evidence;
2. A contingent motion to cross-examine Dr. Katherine Dawson and Dr. Richard A. Rudick, in the event that Drs. Dawson's and Rudick's testimony is submitted by Patent Owner, Biogen Ma, Inc (Biogen); and
3. A motion opposing the benefit of provisional application 60/888,921.

The filing of a motion to exclude evidence is already scheduled in the March 22 order. See also 37 CFR § 42.64(c). As to any declarations or affidavits submitted during the prosecutions that led to the issuance of Biogen's involved patent, those documents are part of the administrative record of the patent and are, in general, admissible. However, in order to be given any weight, the declarant/affiant must be made available for cross-examination in the manner specified in 37 C.F.R. § 42.51(b)(1)(ii). To the extent that an affidavit or declaration asserts tests or technical data, any submissions, including the prosecution affidavits, must also comply with 37 C.F.R. § 42.65(b). CFAD may also argue the sufficiency of the showings as part of its Reply.

The proposed contingent motion to take the cross-examination of Drs. Dawson and Rudick is unnecessary. Affidavit testimony submitted in this proceeding is subject to cross-examination. 37 C.F.R. § 42.51(b)(1)(ii).

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The proposed motion attacking the benefit of the provisional application also is unnecessary. No benefit has been “accorded” to the filing date of Biogen’s Provisional Application. CAFD may file an opposition to Biogen’s motion for benefit as indicated on the attached schedule.

SO ORDERED.

DUE DATE APPENDIX

DUE DATE 1	22 June 2016
Patent Owner Opposition to Petition	
Motion to Antedate	
Motion to Amend	
DUE DATE 2	21 Sept. 2016
Petitioner Reply to Patent Owner Opposition	
Petitioner Opposition to Antedating	
Petitioner Opposition to Motion to Amend	
DUE DATE 3	12 Oct. 2016
Patent Owner Reply to Opposition to Amend	
Patent Owner Antedating Reply	
DUE DATE 4	26 Oct. 2016
Observation of cross-examination of reply witness	
Motion to Exclude Evidence	
Request for Oral Argument	
DUE DATE 5	09 Nov. 2016
Response to Observation	
Opposition to Motion to Exclude	
DUE DATE 6	16 Nov. 2016
Reply to Opposition to Motion to Exclude	
DUE DATE 7	30 Nov. 2016
Oral argument, if requested 09:30 am (ET)	

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