

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEPTUNE GENERICS, LLC,¹

Petitioner,

v.

ELI LILLY & COMPANY,

Patent Owner.

SANDOZ INC.,²

Petitioner,

v.

ELI LILLY & COMPANY,

Patent Owner

Cases IPR2016-00237,³ IPR2016-00240,⁴ IPR2016-00318⁵
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¹ Neptune Generics is the first named Petitioner in both IPR2016-00237 and IPR2016-00240. Apotex, Inc., Apotex Corp., Teva Pharmaceuticals, Fresenius Kabi USA, LLC, and Wockhardt Bio AG are the remaining Petitioners in both IPR2016-00237 and IPR2016-00240.

² Sandoz is the first named Petitioner in IPR2016-00318. Apotex, Inc., Apotex Corp., Emcure Pharmaceuticals, Ltd., Heritage Pharma Labs Inc., Heritage Pharmaceuticals Inc., Glenmark Pharmaceuticals, Inc., USA, Glenmark Holding SA, Glenmark Pharmaceuticals, Ltd., Mylan Laboratories Limited, Teva Pharmaceuticals, Fresenius Kabi USA, LLC, and Wockhardt Bio AG are the remaining Petitioners.

³ Cases IPR21-01190, IPR2016-01335, and IPR2016-01341 have been joined with IPR2016-00237.

⁴ Cases IPR2016-01191, IPR2016-01337 and IPR2016-01343 have been joined with IPR2016-00240.

⁵ Cases IPR2016-01429, IPR2016-01393, and IPR2016-01340 have been joined with IPR2016-00318.

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Before JACQUELINE WRIGHT BONILLA and MICHAEL P. TIERNEY,
Vice Chief Administrative Patent Judges, LORA M. GREEN, *Administrative
Patent Judge*.

GREEN, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

The Revised Scheduling Order in these three proceedings initially set oral hearing for March 7, 2017. All parties requested an oral hearing pursuant to 37 C.F.R. § 42.70(a). In an email dated February 14, 2017, we asked if counsel would be available for a hearing the morning of March 16, 2017. Shortly thereafter, counsel for both parties informed us via email that they were available. Accordingly, the parties' request for oral hearing is *granted*.

The hearing will commence at **9:30 AM Eastern Time**, on **MARCH 16, 2017**, and will be conducted at the **USPTO Central Headquarters located in Alexandria, Virginia** (the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, 22314). The hearing will be open to the public for in-person attendance that will be accommodated on a first-come first-serve basis.

Patent Owner, and Petitioners collectively, will each have 90 minutes of total time to present their arguments. Because Petitioners bear the ultimate burden of proof that the challenged claims are unpatentable, Petitioners will proceed first to present their case regarding the challenged claims and ground for which the Board instituted trial. Patent Owner will then respond to Petitioners' arguments. Petitioners may reserve time to

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respond to arguments presented by Patent Owner. Patent Owner may not reserve time.

The hearing will address three separate proceedings challenging the same patent. Thus, the parties must meet and confer and come to a decision as to how they would like the hearing to proceed. For example, the parties may choose to address all the issues in all cases together. In that situation, Petitioners collectively will have 90 minutes for their presentations, and Patent Owner will have 90 minutes for its presentation. In the alternative, the parties may choose to address the cases sequentially. For example, the parties may choose to address the issues in IPR2016-00237 and 2013-00240 together, with 50 minutes of Petitioners' 90 minute time allotted to that argument, and then address the issues in IPR2016-00318, with 40 minutes of Petitioner's 90 minute time allotted to that argument. Patent Owner could allot its 90 minutes how it then wishes between the two arguments. The parties must inform the Board by email how they plan to divide the allotted time between the three proceeding at least two days before oral argument, that is, no later than close of business on **March 14, 2017**.

The Board expects lead counsel for each party to be present in person at the oral hearing. Lead or backup counsel, however, may present the party's argument. If any party anticipates that its lead counsel will not be attending the oral argument, the parties should request a joint telephone conference with the Board no later than (2) two business days prior to the oral hearing to discuss the matter.

The Board will provide a court reporter for the oral argument and the reporter's transcript will constitute the official record of the oral argument. The hearing transcript will be entered in the record of this proceeding.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least (7) seven business days before the hearing date and filed no later than the time of the oral argument. The parties also shall provide a courtesy copy of any demonstrative exhibits to the Board at least (3) three business days prior to the hearing by emailing them to Trials@uspto.gov.

Demonstrative exhibits are not evidence, but merely a visual aid at the oral arguments. Demonstrative exhibits may not introduce new evidence or raise new arguments, but instead, should cite to evidence in the record. 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) and *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118) for guidance regarding the appropriate content of demonstrative exhibits.

The Board requests that the parties attempt to resolve any objections to the demonstratives, and if any objections cannot be resolved, the parties must file any such objections with the Board at least (2) two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstratives are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if deemed necessary. Otherwise, the Board will rule on the objections at the hearing.

To aid in the preparation of an accurate transcript, each party shall provide a paper copy of any demonstratives to the court reporter on the day

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of the oral arguments. Such paper copies shall not become part of the record of this proceeding. 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.

Requests for audio-visual equipment are to be made (5) five days in advance of the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

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