

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

R.J. REYNOLDS VAPOR COMPANY,
Petitioner,

v.

FONTEM HOLDINGS 1 B.V.,
Patent Owner.

Cases IPR2016-01268
Patent 8,365,742 B2

Before BRIAN J. McNAMARA, JEREMY M. PLENZLER, and
JO-ANNE M. KOKOSKI, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

Patent Owner and Petitioner each request an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 35, 36. The requests are *granted*.

Each party will have 30 minutes of total argument time to present its arguments. Petitioner bears the ultimate burden of proof that the patent claims at issue in this review are unpatentable. Therefore, Petitioner will proceed first to present its case with regard to the challenged claims at issue in the instituted trial. Thereafter, Patent Owner will respond to Petitioner's arguments. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner.

The hearing shall commence on October 10, 2017 at 1:00 pm EDT. The hearing will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, VA. In-person attendance will be accommodated on a first-come, first-served basis. The Board will provide a court reporter, and the transcript shall constitute the official record of the hearing.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served seven business days before the hearing. Notwithstanding § 42.70, however, the parties shall file the demonstrative exhibits no later than three business days before the hearing to allow the panel sufficient time to review the materials.

The Board reminds the parties that demonstrative exhibits are not evidence, but are intended to assist the parties in presenting their oral arguments to the Board. The Board also reminds the parties that demonstrative exhibits are not a mechanism for making arguments not previously addressed in the Papers. 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), for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If such objections cannot be resolved the parties may file any remaining objections with the Board at least three business days before the oral hearing. The objections should identify with particularity the portions of the demonstrative exhibits that are subject to objection and include a one-sentence statement of the basis for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

A hard copy of the demonstratives should be provided to the court reporter at the hearing. 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. The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location, and that if a demonstrative is not filed or otherwise made fully available or visible to the judge presiding over the hearing remotely, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible to all of the judges, the parties are invited to contact the Board at 571-272-9797. Documents presented on the Elmo projector are not visible to remote judges, so please plan accordingly.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party's argument. If either party anticipates that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two business days prior to the oral hearing to discuss the matter.

Questions regarding specific audio-visual equipment should be directed to the Board at 571-272-9797. Requests for audio-visual equipment are to be made no later than 5 days in advance of the hearing date. The request is to be sent directly to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

IPR2016-01268
Patent 8,365,742 B2

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