

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APOTEX INC., APOTEX CORP., APOTEX PHARMACEUTICALS  
HOLDINGS INC., AND APOTEX HOLDINGS, INC.,  
Petitioner,

v.

OSI PHARMACEUTICALS, INC.,  
Patent Owner.

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Case IPR2016-01284  
Patent 6,900,221 B1

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Before LORA M. GREEN, RAMA G. ELLURU, and ZHENYU YANG,  
*Administrative Patent Judges.*

GREEN, *Administrative Patent Judge.*

ORDER  
Oral Hearing  
*37 C.F.R. § 42.70*

We instituted the above-identified *inter partes* review on January 9, 2017. Paper 8. The Scheduling Order set October 3, 2017, as the date for oral argument, if requested by either party. Paper 9. Petitioner and Patent Owner each requested an oral hearing pursuant to 37 C.F.R. § 42.70(a). Papers 36, 38. The requests are *granted*.

The hearing will commence at **1:00 PM Eastern Time**, on **Tuesday, October 3, 2017**, and will be conducted at the **USPTO Central Headquarters 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-served basis.

Each party will have 45 minutes of argument time. Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. Accordingly, Petitioner will proceed first to present its case regarding the challenged claims for which the Board instituted trial. Patent Owner will then have an opportunity to respond to Petitioner's arguments. Thereafter, Petitioner may use any time it has reserved for rebuttal only to respond to arguments presented by Patent Owner. Patent Owner may not reserve rebuttal time.

The Board will provide a court reporter, and the reporter's transcript will constitute the official record of the hearing. 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 seven (7) business days before the hearing. The Board requests that such exhibits be *filed* at the Board at least five business days before the

hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

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), 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, but if such objections cannot be resolved the parties may file any objections to demonstratives with the Board at least two business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. The Board asks the parties to confine demonstrative exhibit objections to those identifying egregious violations that are prejudicial to the administration of justice. 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.

The parties are also 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

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reporter's transcript and the ability of the judge participating in the hearing remotely to closely follow the presenter's arguments.

The Board expects lead counsel for each party to be present at the oral hearing, although any counsel of record may make the actual presentation. If either party anticipates that its lead counsel will not be in attendance at the oral hearing, the Board shall be advised by email no later than five (5) business days prior to the oral hearing, and such lead counsel shall be available to discuss the matter via conference call if necessary.

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 (5) five days in advance of the hearing date. The request is to be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov). If the request is not received timely, the equipment may not be available on the day of the hearing.

It is

ORDERED that oral argument will commence at *1:00 PM ET on October 3, 2017*.

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