

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KOIOS PHARMACEUTICALS LLC,
Petitioner,

v.

MEDAC GESELLSCHAFT FÜR KLINISCHE SPEZIALPRÄPARATE
MBH,
Patent Owner.

Case IPR2016-01370
Patent 8,644,231 B2

Before JACQUELINE WRIGHT BONILLA, TONI R. SCHEINER, and
ERICA A. FRANKLIN, *Administrative Patent Judges*.

BONILLA, *Administrative Patent Judge*.

SCHEDULING ORDER

A. INITIAL CONFERENCE CALL

The parties are directed to contact the Board within a month of this decision if there is a need to discuss proposed changes to this Scheduling Order or proposed motions. To request a conference call, the parties should submit a list of dates and times when they are available for a call. If an initial conference call is requested, the parties should be prepared to discuss any proposed changes to this Scheduling Order and any motions the parties anticipate filing during the trial. The parties are directed to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012), for guidance in preparing for the initial conference call.

B. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. The parties may not stipulate to an extension of DUE DATES 6 and 7.

In stipulating to different times, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (*id.* § 42.64(b)(2)), to conduct cross-examination (*id.* § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (see section C, below). *In addition, any request for oral argument should be filed by original DUE DATE 4 as set forth in the DUE DATE APPENDIX.*

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756 App. D, at

48,772–73 (Aug. 14, 2012), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys’ fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

1. DUE DATE 1

Patent Owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (*id.* § 42.121).

Patent Owner must file any such response or motion to amend by DUE DATE 1. Patent Owner is reminded that it must confer with the Board before filing a motion to amend. *Id.* § 42.121(a). Patent Owner should contact the Board to request the conference in sufficient time to ensure that the conference is conducted at least one week before DUE DATE 1. If Patent Owner elects not to file either a response to the petition or a motion to amend, Patent Owner must arrange a conference call with the parties and the Board. Patent Owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.

2. DUE DATE 2

Petitioner must file any reply to Patent Owner’s response and opposition to the motion to amend by DUE DATE 2.

3. DUE DATE 3

Patent Owner must file any reply to Petitioner’s opposition to Patent Owner’s motion to amend by DUE DATE 3.

4. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (see section C, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R § 42.64(c)) and any request for oral argument (*id.* § 42.70(a)) by DUE DATE 4.

5. DUE DATE 5

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

6. DUE DATE 6

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

7. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE

7.

C. CROSS-EXAMINATION

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).

2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

D. MOTION FOR OBSERVATION ON CROSS-EXAMINATION

A motion for observation on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

E. PROTECTIVE ORDER

No protective order has been entered in this proceeding. The parties are reminded of the requirement for a protective order when filing a motion to seal. 37 C.F.R. § 42.54. If the parties have agreed to a proposed protective order, including the Standing Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756 App. B (Aug. 14, 2012), they should file a signed copy of the proposed protective order with the motion to seal. If the parties choose to propose a protective order other than, or departing from, the default Standing Protective Order, they must submit a joint, proposed protective order, accompanied by a red-lined version based on the default protective order in Appendix B to the Board's Office Patent Trial Practice Guide.

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