

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.

Case IPR2016-01692
Patent 9,326,548 B2

Before JO-ANNE M. KOKOSKI, KRISTINA M. KALAN, and
KIMBERLY McGRAW, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

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Petitioner and Patent Owner each have requested an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 32, 33. The requests are *granted*. Oral arguments will commence at 1:00 PM Eastern Time on October 26, 2017, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

Each side will have forty-five (45) minutes to present arguments. Petitioner bears the ultimate burden of proof that the claims at issue in this review are unpatentable. Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. Patent Owner will then respond to Petitioner's arguments. Petitioner may reserve time to respond to arguments presented by Patent Owner, with some limitations. More specifically, to the extent that Petitioner reserves time, it may respond only to Patent Owner's presentation on all matters.

The hearing will be open to the public for in-person attendance that 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 must be served at least seven (7) business days before the hearing. The parties also shall provide the demonstrative exhibits to the Board at least two (2) business days prior to the hearing by emailing them to Trials@uspto.gov. Despite the requirement in § 42.70(b) for parties to file demonstratives, the parties shall *not* file any demonstrative exhibits in this case without prior authorization from the Board. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

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 (2) 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. 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 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 made fully available or visible to the judge(s) participating in the hearing remotely, that demonstrative will not be considered. 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 reporter's transcript and the ability of the judge(s) participating in the hearing remotely to closely follow the presenter's arguments.

The Board expects lead counsel for each party to be present at hearing, although any backup counsel may make the actual presentation, in

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whole or in part. If any lead counsel will not be in attendance at hearing, the Board should be notified via a joint telephone conference call no later than two (2) business days prior to the 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 five (5) days in advance of the hearing date. The request is to be sent to Trials@uspto.gov, any requests not sent specifically to that email address will not be considered timely. If the request is not received timely, the equipment may not be available on the day of the hearing.

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