

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX INC. and APOTEX CORP., and
ARGENTUM PHARMACEUTICALS LLC,
Petitioners,
v.
NOVARTIS AG,
Patent Owner.

Case IPR2017-00854¹
Patent 9,187,405 B2

Before LORA M. GREEN, CHRISTOPHER M. KAISER,
and ROBERT A. POLLOCK, *Administrative Patent Judges*.

POLLOCK, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ Case IPR2017-01550 has been joined with this proceeding.

In response to an August 8, 2017, email communication from Patent Owner, (Ex. 3002), the panel conducted a conference with counsel on August 10, 2017, to discuss scheduling for the deposition of Petitioner's expert, Dr. Giesser. Present were Judges Green, Kaiser, and Pollock; Michael Rosato, Jad Mills, and Steven Parmalee for Petitioner, Apotex; and Robert Trenchard and Jane Love for Patent Owner, Novartis.

As we understand the situation, counsel for Patent Owner has asked for deposition dates of September 18, 19, 20, 27, and 28, as well as October 3 and 4. Dr. Giesser has rejected each of those dates. Petitioner eventually offered three dates: September 8, 22, and 23, which counsel for Patent Owner found unacceptable because September 8 is a trial conflict, Friday, September 22 is Rosh Hashanah, and Saturday, September 23, would have required counsel for Patent Owner to travel cross-country during or immediately after the holiday.

Speaking on behalf of Apotex, Mr. Rosato explained that Dr. Giesser is a practicing physician whose availability is restricted by obligations to patient care. In relying on Dr. Giesser as an expert, however, Petitioner takes on an obligation to make that person reasonably available for cross examination. And although we appreciate Mr. Rosato's representation that Petitioner is willing to come to an agreement regarding a deposition date, Mr. Rosato was warned that if Dr. Giesser is not reasonably made available for cross-examination, we may order Petitioner to show cause why Dr. Giesser's Declaration should not be stricken from the record.

Accordingly, we enter the following order.

ORDER

ORDERED that Petitioner will offer three additional weekdays that are not Jewish holidays when Dr. Giesser is available for deposition. Such dates will be on or before DUE DATE 1 (currently October 13, 2017). If necessary, parties may stipulate to different dates for DUE DATES 1–5 as set forth in the Scheduling Order.

FURTHER ORDERED that if parties cannot reach agreement regarding a date for Dr. Giesser’s deposition by September 1, 2017, they should arrange a conference call with the panel.

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Patent 9,187,405 B2

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