

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARGENTUM PHARMACEUTICALS LLC,  
Petitioner,

v.

ALCON RESEARCH, LTD.,  
Patent Owner.

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Case IPR2017-01053  
Patent 8,268,299 B2

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Before GRACE KARAFFA OBERMANN, and SUSAN L. C. MITCHELL,  
*Administrative Patent Judges.*

OBERMANN, *Administrative Patent Judge.*

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

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Patent Owner and Petitioner request an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 42, 46. Each party requests forty-five (45) minutes of total time to present argument. Paper 42, 1: Paper 46, 1. The requests are *granted* to the extent set forth below and subject to the following conditions.

Oral argument shall commence at 10:00 AM Eastern Time on June 14, 2018, on the 9<sup>th</sup> floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Each party will have forty-five (45) minutes of total time to present argument. Petitioner bears the ultimate burden of proof that the patent claims at issue are unpatentable. Therefore, Petitioner will open the hearing by presenting its case regarding the challenged claims for which we instituted trial. Petitioner may reserve some of its argument time for rebuttal. Thereafter, Patent Owner will respond to Petitioner's presentation.

The Board will provide a court reporter for the hearing and the reporter's transcript shall constitute the official record of the hearing. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are requested to contact the Board at least five (5) days in advance of the hearing to discuss the matter.

Demonstrative exhibits are not evidence sufficient to prove underlying facts, but, rather, serve as visual aids to facilitate the presentation of argument at an oral hearing. *See Duncan v. Dep't of the Air Force*, 674 F.3d 1359, 1363 (Fed. Cir. 2012) (discussing the nature and proper purpose of demonstrative exhibits). Demonstrative exhibits must not include new evidence and each must include citations to the record sufficient to establish

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that the exhibit contains no new argument or evidence not already of record in the proceeding(s) in which it is offered. The parties are directed to serve demonstrative exhibits on opposing counsel at least five (5) business days before the hearing date. Please also provide a courtesy copy of any demonstrative exhibits to the Board at least five (5) business days prior to the hearing by emailing them to [Trials@uspto.gov](mailto:Trials@uspto.gov). **The parties are directed to refrain from filing demonstrative exhibits in the record of this proceeding.**

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 demonstrative exhibits with the Board at least two (2) business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstratives are subject to objection and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections until the oral argument. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB January 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

The parties should be prepared for the possibility that at least one member of the panel may attend the hearing electronically from a remote location and may not be able to view the projection screen in the hearing

room. If a demonstrative exhibit is not made available or visible to the judge(s) presiding over the hearing remotely, that demonstrative will not be considered. Counsel 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 for the benefit of the judge(s) presiding over the hearing remotely.

No live testimony from any witness will be taken at the oral argument. 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 expects that its lead counsel will not attend the oral hearing, the parties should initiate a joint telephone conference with the Board no later than two (2) business days prior to the oral hearing to discuss the matter.

Both parties request permission to use certain audio/visual equipment to display exhibits during the oral hearing. Paper 42, 1; Paper 46, 1. Those requests, and any other special requests for audiovisual equipment, should be directed to [Trials@uspto.gov](mailto:Trials@uspto.gov). Requests for special equipment will not be honored unless presented in a separate communication not less than five days before the hearing, directed to the above email address.

It is

ORDERED that the parties' requests for oral hearing are *granted* subject to the conditions set forth in this Order; and

FURTHER ORDERED that oral hearing, conducted pursuant to the procedures outlined above, shall commence at 10:00 AM Eastern Time on June 14, 2018.

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