

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS, LLC,
Petitioner,

v.

ALCON RESEARCH LTD.,
Patent Owner.

Case IPR2017-01053
Patent 8,268,299 B2

Record of Oral Hearing
Held: June 14, 2018

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

Case IPR2017-01053
Patent 8,268,299 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Thursday, June 14, 2018, commencing at 10 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia 22314.

PROCEEDINGS

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2 JUDGE OBERMANN: Good morning. Please be seated. We're on
3 the record. If you just give us a minute. All of the judges have basically
4 every exhibit as well as every brief on our computers so if you see us
5 looking down and reading or typing it doesn't mean we're shopping on
6 Amazon and it doesn't mean we're emailing our friends. We're actually
7 paying attention to what you're doing and we're pulling up stuff here that's
8 related to your case and taking notes right online. So let me just get my
9 computer started so that we can get going here.

10 Okay. This is a final hearing in IPR2017-01053 Argentum
11 Pharmaceuticals v. Alcon Research Ltd. The challenged patent is U.S.
12 patent 8,268,299. I'm Judge Obermann and to my right is Judge Mitchell.
13 We have appearing today remotely from Colorado Judge Christopher Kaiser,
14 so because we do have Judge Kaiser appearing remotely I want to remind
15 counsel that if you're referring to an exhibit he might not necessarily be able
16 to see your demonstratives so please give him the slide number and he can
17 pull it up on his computer and follow along.

18 Let's start with introductions. Who do we have for Petitioner, today?

19 MR. HOUSTON: Good morning, Your Honor. Michael Houston,
20 counsel for Petitioner Argentum. I'll be arguing and I have with me Mr.
21 Tyler Liu from Petitioner, Argentum.

22 JUDGE OBERMANN: Thank you very much, but Mr. Houston
23 you'll be doing the entire presentation?

24 MR. HOUSTON: Yes, yes, Your Honor.

1 JUDGE OBERMANN: Great. And who do we have for Patent
2 Owner?

3 MR. ZOLAN: Good morning, Your Honor. Alexander Zolan on
4 behalf of the Patent Owner. With me is David Krinsky, lead counsel, and
5 also Drew Holmes from Novartis, the Patent Owner's parent company.

6 JUDGE OBERMANN: Great. And who will be presenting
7 arguments?

8 MR. ZOLAN: I'll be presenting.

9 JUDGE OBERMANN: Okay. And you're Mr. Zolan?

10 MR. ZOLAN: That's right.

11 JUDGE OBERMANN: Okay. I see you on the list. Great. Each
12 party has 45 minutes to present their case. That was in the Hearing Order.
13 Petitioner will go first and you may reserve rebuttal time if you'd like, and
14 then Patent Owner you can present your case and your case should also
15 include any argument you might have on secondary considerations, and I
16 will allow you if you'd like to reserve a small bit of time to do a final
17 presentation, basically to sur-reply but only on the issue of secondary
18 considerations since you bear the burden on that. I'm very appreciative that
19 neither party filed any objections to the demonstratives. Thank you very
20 much, and I'll just remind you that the demonstratives are not evidence, that
21 they're simply a tool for us so that we can see all the evidence that's already
22 in the record, sort of synthesized. So I thank you for that.

23 Along those lines I'll ask that you don't object during each other's
24 presentation. There's no issue of confidential information here. That's the
25 only reason I would expect to hear opposing counsel interrupt their friend

1 during their presentation is if there was a disclosure of confidential
2 information. I don't think that's an issue here. We are open to the public,
3 and I'm going to start the clock ticking when Mr. Houston wants to begin his
4 presentation. First of all, I should ask would you like to reserve some time?

5 MR. HOUSTON: Yes, Your Honor. I'd like reserve 20 minutes.

6 JUDGE OBERMANN: Twenty minutes? I'm going to put 25
7 minutes on the clock.

8 MR. HOUSTON: And, Your Honor, would it be helpful to the panel
9 and the court reporter to have hard copies of the demonstrative slides?

10 JUDGE OBERMANN: I'd kind of like that, yes.

11 MR. HOUSTON: Okay. I'll ask my co-counsel to approach, if that's
12 okay.

13 JUDGE OBERMANN: Sure, thank you. Okay, great. Okay, Mr.
14 Houston, when you're ready I'll set your clock ticking.

15 MR. HOUSTON: Good morning. May it please the Court. Your
16 Honors, as I mentioned before I'm Mike Houston. I'll be speaking on behalf
17 of Petitioner, Argentum, this morning in these proceedings.

18 I have some demonstrative slides to guide my remarks this morning as
19 you're well aware. Slide 2 of the demonstrative really just summarizes the
20 filings that have been occurred in the proceedings so far, the filings that have
21 occurred and haven't occurred.

22 Slide 3 just shows the grounds that were instituted on in the Institution
23 decision. Thankfully, in this case that included all grounds and all claims
24 that were raised in the petition so they don't have an SAS Institute issue to
25 deal with in this proceeding.

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