

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WATSON LABORATORIES, INC.
Petitioner,

v.

UNITED THERAPEUTICS CORP.
Patent Owner.

Cases IPR2017-01621 and IPR 2017-01622
Patents 9,358,240 B2 and 9,339,507 B2

Before TONI R. SCHEINER, ERICA A. FRANKLIN, and DAVID
COTTA, *Administrative Patent Judges*.

COTTA, *Administrative Patent Judge*.

MODIFIED SCHEDULING ORDER

IPR2017-01621 (Patent 9,358,240 B2)

IPR2017-01622 (Patent 9,339,507 B2)

This order modifies the due dates set forth in the Board’s January 11, 2018 Scheduling Order to allow the parties the opportunity to respond to and address issues raised by the Board’s April 30, 2018 Order (“SAS Order”) modifying our institution decision to include review of all challenged claims and all grounds presented in the Petition.¹ 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 addition, even if the parties stipulate to an extension of DUE DATE 4, any request for oral hearing must still be filed on or before the date set forth in this Order, to provide sufficient time for the Board to accommodate the hearing.

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 (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section B, below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (Appendix D), 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

¹ On Thursday May 10, 2018 in advance of a conference call to discuss scheduling changes necessitated by the SAS Order, the parties emailed the Board to provide an agreed upon schedule. Ex. 3008. Due Dates 1–5 set forth herein are identical to those proposed by the parties in that schedule.

IPR2017-01621 (Patent 9,358,240 B2)

IPR2017-01622 (Patent 9,339,507 B2)

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 A

The patent owner may file—

a. A supplemental response to the petition not to exceed 5000 words. The supplemental response shall address only grounds not addressed in the patent owner's response filed on April 27, 2018 (37 C.F.R. § 42.120), and

b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such supplemental response or motion to amend by DUE DATE 1A.

2. DUE DATE 2

The petitioner must file any reply to the patent owner's response and patent owner's supplemental response and opposition to the motion to amend by DUE DATE 2. Petitioner's reply shall not exceed 7600 words.

3. DUE DATE 3

The patent owner must file any reply to the 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.

IPR2017-01621 (Patent 9,358,240 B2)

IPR2017-01622 (Patent 9,339,507 B2)

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 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.

IPR2017-01621 (Patent 9,358,240 B2)
IPR2017-01622 (Patent 9,339,507 B2)

DUE DATE APPENDIX

DUE DATE 1A..... July 11, 2018

Patent owner's supplemental response to the petition

Patent owner's motion to amend the patent

DUE DATE 2 Sep. 7, 2018

Petitioner's reply to patent owner's response to petition

Petitioner's opposition to motion to amend

DUE DATE 3 Sep. 28, 2018

Patent owner's reply to petitioner's opposition to motion to amend

DUE DATE 4 Oct. 12, 2018

Motion for observation regarding cross-examination of reply witness

Motion to exclude evidence

Request for oral argument

DUE DATE 5 Oct. 26, 2018

Response to observation

Opposition to motion to exclude

DUE DATE 6 Nov. 9, 2018

Reply to opposition to motion to exclude

DUE DATE 7 Nov. 20, 2018

Oral argument (if requested)

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.