

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLATWING PHARMACEUTICALS, LLC and MYLAN
PHARMACEUTICALS, INC.,
Petitioners,

v.

ANACOR PHARMACEUTICALS, INC.,
Patent Owner.

Case IPR2018-00168 (Patent 9,549,938 B2)
Case IPR2018-00169 (Patent 9,566,289 B2)
Case IPR2018-00170 (Patent 9,566,290 B2)
Case IPR2018-00171 (Patent 9,572,823 B2)¹

Before GRACE KARAFFA OBERMANN, TINA E. HULSE, and
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

HULSE, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ Cases IPR2018-01358, -1359, -1360, and -1361 have been joined with Cases IPR2018-00168, -169, -170, and -171, respectively. This order addresses issues that are common to all four cases. We, therefore, issue a single order that has been entered in each case. Paper numbers refer to those filed in IPR2018-00168.

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Pursuant to our scheduling order, oral argument is scheduled to be held on March 1, 2019, if requested by the parties. Paper 10. Petitioner and Patent Owner have jointly requested oral argument. Paper 26. The request is *granted* subject to the conditions and under the terms set forth below.

The oral argument will commence at 1:00 PM Eastern Time, on Friday, March 1, 2019, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia 22314. The oral argument will be open to the public for in-person attendance, which will be accommodated on a first-come, first-served basis.

The parties have each requested 45 minutes total to present arguments for all four proceedings. Petitioner bears the ultimate burden of proof that Patent Owner's patent claims at issue are unpatentable. Therefore, at oral argument, Petitioner will proceed first to present its case with respect to the challenged patent claims and the grounds on which the Board instituted trial. Petitioner may reserve some of its argument time for rebuttal. Patent Owner will then respond to Petitioner's initial presentation and may reserve time for sur-rebuttal.

The Board will provide a court reporter for the oral argument, and the reporter's transcript will constitute the official record of the oral argument. The hearing transcript will be entered in the record of this proceeding. The Board's August 2018 Trial Practice Guide Update ("TPGU") provides an opportunity for the parties to request a pre-hearing conference. *See* TPGU 19 ("The purpose of the pre-hearing conference is to afford the

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parties the opportunity to preview (but not argue) the issues to be discussed at the oral hearing, and to seek the Board's guidance as to particular issues that the panel would like addressed by the parties."'). If either party desires a pre-hearing conference, the parties should jointly contact the Board at least seven business days before the hearing to request a conference call for that purpose.

The parties shall serve any demonstrative exhibits on opposing counsel at least seven business days before the hearing. The parties shall also provide a courtesy copy of any demonstrative exhibits to the Board no later than three business days before the hearing by emailing them to Trials@uspto.gov. Notwithstanding 37 C.F.R. § 42.70(b), the parties shall not file any demonstrative exhibits in these proceedings without prior authorization from the Board.

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties shall confer with each other regarding any objections to demonstrative exhibits. For any issue that cannot be resolved after conferring, the parties may each file a one-page list of objections at least three business days before the hearing. The list should identify with particularity which demonstrative exhibits are subject to

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objection and include a short statement of the reason for each objection. No argument or further explanation is permitted.

The Board will consider the objections and schedule a telephone conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

The parties are advised that at least one member of the panel will be attending the hearing from a remote location. The parties are 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 participating remotely to follow the presenter's arguments. The parties should note that the remote judge will not be able to see what is projected on the screen in the hearing room.

The Board expects lead counsel for each party to be present at oral hearing, although any backup counsel may make the actual presentation, in whole or in part. If lead counsel for either party will not be in attendance at oral hearing, the Board should be notified via a joint telephone conference call no later than two business days before the oral hearing to discuss the matter.

The parties may request the use of audio-visual equipment during the oral hearing. Formal requests are to be made five business days in advance

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of the hearing date and should be sent to Trials@uspto.gov. If the request is not timely, the equipment may not be available on the day of the hearing.

PETITIONERS:

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