

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

BIOGEN MA INC,
Patent Owner.

Case IPR2018-01403
Patent No. 8,399,514 B2

Before SHERIDAN K. SNEDDEN, JENNIFER MEYER CHAGNON, and
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

SCHEDULING ORDER

A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6), except for requesting oral argument by Due Date 4. 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 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 D, below).

1. DUE DATE 1

Patent Owner may file—

a. A response to the petition (37 C.F.R. § 42.120). If Patent Owner elects not to file a response, Patent Owner must arrange a conference call with the parties and the Board. Patent Owner is cautioned that any arguments for patentability not raised in the response may be deemed waived.

b. A motion to amend the patent (37 C.F.R. § 42.121). Patent Owner may file a motion to amend without prior authorization from the Board. Nevertheless, Patent Owner must confer with the Board before filing such a motion. 37 C.F.R. § 42.121(a). To satisfy this requirement, Patent Owner should request a conference call with the Board no later than two

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weeks prior to DUE DATE 1. The parties are directed to the Board's Guidance on Motions to Amend in view of *Aqua Products* (available at https://www.uspto.gov/sites/default/files/documents/guidance_on_motions_to_amend_11_2017.pdf) and to *Western Digital Corp. v. SPEX Techs., Inc.*, No. IPR2018-00082 (PTAB April 25, 2018) (Paper 13) (providing information and guidance on motions to amend).

2. DUE DATE 2

Petitioner may file a reply to the Patent Owner's response.

Petitioner may file an opposition to the motion to amend.

3. DUE DATE 3

Patent Owner may file a sur-reply to Petitioner's reply. *See* Trial Practice Guide Update, 14–15, available at <https://go.usa.gov/xU7GP>; *see also* 83 Fed. Reg. 38,989 (Aug. 13, 2018) (notifying the public of the availability of the Trial Practice Guide Update).

Patent Owner may file a reply to the opposition to the motion to amend.

4. DUE DATE 4

Petitioner may file a sur-reply to Patent Owner's reply to the opposition to the motion to amend. *See* Trial Practice Guide Update, 14–16.

Either party may file a motion to exclude evidence (37 C.F.R. § 42.64(c)). *See* Trial Practice Guide Update, 16–18.

Either party may file a request for oral argument (37 C.F.R. § 42.70(a)).

5. DUE DATE 5

Either party may file an opposition to a motion to exclude evidence.

6. DUE DATE 6

Either party may file a reply to an opposition to a motion to exclude evidence.

Either party may request that the Board hold a pre-hearing conference.

7. DUE DATE 7

The oral argument (if requested by either party) shall be held on this date. Approximately one month prior to the argument, the Board will issue an order setting the start time of the hearing and the procedures that will govern the parties' arguments.

B. INITIAL CONFERENCE CALL

The parties are directed to contact the Board within a month of the Decision to Institute if there is a need to discuss proposed changes to this Scheduling Order or proposed motions. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (guidance in preparing for the initial conference call).

C. TESTIMONY

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,772 (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 attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

D. CROSS-EXAMINATION

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).
2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

E. PROTECTIVE ORDER

A protective order does not exist in this proceeding unless the parties file one and the Board approves it. If either party files a motion to seal before entry of a protective order, a jointly proposed protective order should be presented as an exhibit to the motion. We encourage the parties to adopt the Board's default protective order if they conclude that a protective order is necessary. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,769 (Appendix B). If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order jointly along with a redline comparison of the proposed and default protective orders showing the differences; and the parties must explain why the proposed deviations from the default protective order are necessary.

The Board has a strong interest in the public availability of the

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