

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RIMFROST AS,  
Petitioner,

v.

AKER BIOMARINE ANTARCTIC AS.,  
Patent Owner.

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Case IPR2018-01730  
Patent 9,072,752 B2

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Before TINA E. HULSE, and JOHN E. SCHNEIDER,  
*Administrative Patent Judges.*

SCHNEIDER, *Administrative Patent Judge.*

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

Petitioner and Patent Owner both request an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 28 and 29. The requests are *granted* to the extent set forth below and subject to the following conditions.

Oral argument shall commence at **1:00 PM Central Time on December 9, 2019**, in the **Texas Regional Office**, Terminal Annex Federal Building, 207 S. Houston Street, Dallas Texas 75202.

Petitioner and Patent Owner both request sixty minutes for argument. Papers 26 and 28. Accordingly, the Board determines that each party shall be allotted sixty (60) 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. Absent special circumstances, a petitioner will not be permitted to reserve for rebuttal more than half the total time allotted for argument. Thereafter, Patent Owner will respond to Petitioner's presentation and present its argument regarding its motion to amend. Patent Owner also may reserve some of its argument time for a brief sur-rebuttal.

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 during the hearing, they

are requested to contact the Board by December 1, 2019, to request a conference call to discuss the matter.

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 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 by March 5, 2019 to request a conference call for that purpose.

Demonstrative exhibits used at the final hearing are aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide of a demonstrative exhibit may be marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. Demonstrative exhibits must not include new evidence and each must include citations to the record sufficient to establish 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 seven (7) days before the hearing date. Please also provide a courtesy copy of any demonstrative exhibits to the Board at least seven (7) days prior to the hearing by emailing them to [Trials@uspto.gov](mailto:Trials@uspto.gov). Notwithstanding 37 C.F.R. § 42.70(b), the parties shall not file any demonstrative exhibits in the record of this proceeding without prior authorization from the Board.

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 four (4) 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.

Two members of the panel will attend the hearing electronically from remote locations and will not be able to view the projection screen in the hearing room. If a demonstrative exhibit is not made available prior to the hearing so that a judge appearing remotely has access to the demonstrative, that demonstrative may not be presented at the hearing. Counsel must identify clearly and specifically each demonstrative exhibit (e.g., by slide or page 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.

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

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Board no later than two (2) days prior to the oral hearing to discuss the matter.

The parties may request permission to use certain audiovisual equipment to display exhibits during the oral hearing. Papers 26 and 28. 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 three days before the hearing, directed to the above email address.**

It is ORDERED that the parties' requests for oral hearing (Papers 28 and 29) 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 1:00 PM Central Time on December 9, 2019.

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