

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMNEAL PHARMACEUTICALS LLC, AMNEAL
PHARMACEUTICALS OF NEW YORK, LLC, and MYLAN
PHARMACEUTICALS INC.,
Petitioners,

v.

ALMIRALL, LLC,
Patent Owner.

IPR2019-00207¹
Patent 9,517,219 B2

Before SUSAN L. C. MITCHELL, CHRISTOPHER G. PAULRAJ, and
RYAN H. FLAX, *Administrative Patent Judges*.

FLAX, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

¹ Cases IPR2019-00207 and IPR2019-01095 have been joined in this proceeding.

I. HEARING AND ATTENDANCE

Amneal Pharmaceuticals LLC and Amneal Pharmaceuticals, of New York, LLC (collectively “Petitioner”) and Almirall, LLC (“Patent Owner”) have each requested an oral hearing for the above-captioned proceeding pursuant to 37 C.F.R. § 42.70. Papers 36 and 38. The requests are *granted*. Oral arguments will commence at **1:00 PM Eastern Time on February 7, 2020**, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

Each side will have sixty (60) minutes to present arguments. Petitioners will open the hearing by presenting their case. Patent Owner will then present their case. Next, Petitioner may use any time it has *reserved* for rebuttal to respond to Patent Owner’s arguments. Lastly, Patent Owner may use any time it has *reserved* for sur-rebuttal to respond to Petitioner’s arguments made during reply.

The hearing will be open to the public for in-person attendance, which will be accommodated on a first-come-first-served basis. The parties are directed to contact the Board at least ten (10) days in advance of the hearing if there are any concerns about disclosing confidential information. The Board will provide a court reporter for the hearing, and the reporter’s transcript will constitute the official record of the hearing. Hearing room space is limited. To facilitate planning, each party must send an email message to PTABHearings@uspto.gov five (5) days prior to the hearing if the number planning to attend the hearing in-person for its side (attorneys and others) exceeds five (5) people.

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 as long as that counsel is present in person. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two (2) business days prior to the oral hearing to discuss the matter.

If necessary, a party may request that counsel be permitted to present arguments remotely from an alternative USPTO location. The available remote locations include the Texas Regional Office in Dallas, Texas; the Rocky Mountain Regional Office in Denver, Colorado; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the Silicon Valley Office in San Jose, California. To request that counsel be permitted to present arguments from a remote location, a party should send an email message to PTABHearings@uspto.gov at least ten (10) business days, or as soon as practical, prior to the hearing and provide a short statement of reasons for the request. The Board will notify the parties if the request is approved. Approval of the request does not guarantee that a panel member will be present at the remote location.

A party may also request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. To request remote video viewing, a party must send an email message to PTABHearings@uspto.gov ten (10) business days prior to the hearing, indicating the requested location and the number planning to view the hearing from the remote location. The Board will notify the parties if the request for video viewing is granted. Note that it may not be possible to grant the request due to the availability of resources.

II. DEMONSTRATIVE EXHIBITS

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven (7) business days before the hearing. The parties also shall provide the demonstrative exhibits to the Board at least two (2) business days prior to the hearing by emailing them to Trials@uspto.gov. Despite the requirement in § 42.70(b) for parties to file demonstratives, the parties shall *not* file any demonstrative exhibits in this case without prior authorization from the Board. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

Demonstrative exhibits used at the oral 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 cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the “Board was obligated to dismiss [the petitioner’s] untimely argument . . . raised for the first time during 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, Paper 65 (PTAB Jan. 27, 2014), regarding the appropriate content of demonstrative exhibits. 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 demonstratives with the Board at least two (2) business days before the hearing. The objections should identify with particularity which portions of

the demonstrative exhibits are subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

The parties are also reminded that the presenter must clearly and specifically identify 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. The Board requests such identification for all exhibits discussed during oral argument in the interest of providing a clear record.

Per the Office Patent Trial Practice Guide, either party may request a pre-hearing conference. *See* Office Patent Trial Practice Guide, 84 Fed. Reg. 64,280 (Nov. 21, 2019), which is available at the following link: <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=>. Requests for a pre-hearing conference must be made by January 24, 2020. To request such a conference, an email should be sent to Trials@uspto.gov including several dates and times of availability for one or both parties, as appropriate, that are generally no later than three business days prior to the oral hearing. Please refer to the Trial Practice Guide for more information on the pre-hearing conference.

We note the parties' indications that each may use audio-visual equipment at oral argument. Any special requests for audio-visual equipment, or other specific technology requests, should be directed to

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