

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MODERNA THERAPEUTICS, INC.,
Petitioner,

v.

ARBUTUS BIOPHARMA CORPORATION,
Patent Owner.

Case IPR2019-00554
Patent 8,058,069 B2

Before TINA E. HULSE, CHRISTOPHER G. PAULRAJ, and
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

PAULRAJ, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

Petitioner and Patent Owner request an oral hearing pursuant to 37 C.F.R. § 42.70 in the above-listed proceeding. Papers 23, 24. The requests are *granted*.

As requested by the parties, each party will have **45 minutes** of total argument time to present its arguments. Petitioner bears the ultimate burden of proof that the patent claims at issue in these reviews are unpatentable. Therefore, Petitioner will open the hearing by presenting arguments regarding the pending grounds of unpatentability. Patent Owner will then have the opportunity to respond to Petitioner's arguments. If desired, Petitioner may reserve rebuttal time not to exceed half the total time allotted. Petitioner is cautioned that rebuttal time may only be used to respond to arguments made during Patent Owner's argument. If Petitioner reserves time for rebuttal, Patent Owner may reserve sur-rebuttal time.

Oral arguments will commence at **1:00 pm EDT on April 22, 2020, by video**. The parties are directed to contact the Board at least 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.

If at any time during the proceeding, you encounter technical or other difficulties that fundamentally undermine your ability to adequately represent your client, please let the panel know immediately, and adjustments will be made.¹

¹ For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

To facilitate planning, each party must contact PTAB Hearings at (571) 272-9797 five business days prior to the oral hearing date to receive video set-up information. As a reminder, all arrangements and the expenses involved with appearing by video, such as the selection of the facility to be used from which a party will attend by video, must be borne by that party. If a video connection cannot be established, the parties will be provided with dial-in connection information, and the oral hearing will be conducted telephonically.

If one or both parties would prefer to participate in the oral hearing telephonically, they should notify PTAB Hearings at the above telephone number five business days prior to the hearing to receive dial-in connection information.

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* business days prior to the hearing by emailing them to PTABHearings@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.

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. Accelaron, 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*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), 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 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 Board generally expects lead counsel for each party to be present by video at the oral hearing. However, any counsel of record may present the party's argument as long as that counsel is present by video. If either party anticipates that its lead counsel will not be present at the oral hearing, the parties should initiate a joint telephone conference with the Board no later than two business days prior to the oral hearing to discuss the matter.

Any special requests for audio-visual equipment should be directed to PTABHearings@uspto.gov. A party may also indicate any special requests related to appearing at a video oral hearing, such as a request to

accommodate visual or hearing impairments, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication not less than five (5) days before the hearing.

Please unmute yourself only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. During the oral hearing, the parties are advised to identify clearly and specifically each demonstrative referenced (e.g., by slide or screen number) to ensure the clarity and accuracy of the court reporter's transcript. In addition, the parties are advised to identify themselves each time they speak. Furthermore, the remote nature of the oral hearing may also result in an audio lag, and so the parties are advised to observe a pause prior to speaking, so as to avoid speaking over others.

Members of the public may request to listen in on this oral hearing. If resources are available, the Board generally expects to grant such requests. If either party objects to the Board granting such requests, for example, because confidential information may be discussed, the party must notify the Board by contacting PTABHearings@uspto.gov at least five business days prior to the oral hearing date.

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