

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANDOZ INC.,
Petitioner,

v.

PHARMACYCLICS LLC,
Patent Owner.

Case IPR2019-00865
Patent 9,795,604 B2

Before, SHERIDAN K. SNEDDEN, SUSAN L. C. MITCHELL, and
DAVID COTTA, *Administrative Patent Judges*.

DAVID COTTA, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

Pursuant to 37 C.F.R. § 42.70 and the Board’s Scheduling Order (Paper 9), Sandoz Inc. (“Petitioner”) and Pharmacyclics LLC (“Patent Owner”) have each requested an oral hearing for the above-captioned proceeding. Paper 19, 1; Paper 20, 1. Petitioner requests that it be given forty-five (45) minutes to present its arguments. Paper 20, 1. Patent Owner requests that it be given one hour to present its arguments. Paper 19, 1. The requests are *granted*.

Oral arguments will commence at **9:00 AM Eastern Time on June 19, 2020 by video**. 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

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.

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

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.

Each party will have one hour to present their arguments. Petitioner bears the ultimate burden of proof to show that the patent claim is unpatentable. Therefore, Petitioner will open the hearing by presenting its case regarding the challenged claim. Petitioner may reserve some (but no more than half) of its argument time for rebuttal. Patent Owner will then respond to Petitioner's arguments. Patent Owner may reserve time for a brief sur-rebuttal. Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Patent Owner may use any time it has reserved for sur-rebuttal to respond to Petitioner's arguments made during rebuttal. *See Office Consolidated Trial Practice Guide, November 2019 Edition, 83.*²

The record does not contain information designated as confidential. Accordingly, neither party is authorized to disclose confidential information during 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 may be marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. *See Office Consolidated Trial Practice Guide, November 2019 Edition, 84.* Demonstrative exhibits are not evidence sufficient to prove underlying facts, but, rather, serve as visual aids to facilitate the presentation of argument at an oral hearing. *See Duncan v.*

² Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

Dep't of the Air Force, 674 F.3d 1359, 1363 (Fed. Cir. 2012) (discussing the nature and proper purpose of demonstrative exhibits). 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”). Instead, demonstrative exhibits must cite to evidence in the record.

The parties are directed to serve demonstrative exhibits on opposing counsel at least five (5) business days before the hearing date. The parties shall also provide a courtesy copy of any demonstrative exhibits to the Board at least three (3) business days prior to the hearing by emailing them to PTABHearings@uspto.gov. **The parties shall not file demonstrative exhibits in the record of these proceedings.**

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 three (3) business 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.

The Board generally expects lead counsel for each party to be present by video at the oral hearing. Any counsel of record may present the party's argument as long as that counsel is present by video.

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

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