

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC,
Petitioner,

v.

CIPLA LTD.,
Patent Owner.

Case IPR2017-00807
Patent 8,168,620 B2

Before BRIAN P. MURPHY, ZHENYU YANG, and
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

SAWERT, *Administrative Patent Judge*.

SCHEDULING ORDER
37 C.F.R. § 42.5

I. 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). 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, or to an extension of the Request for Oral Argument date.

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 (*id.* § 42.64(b)(2)), to conduct cross-examination (*id.* § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section II, below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (Appendix D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. *See* 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.

A. INITIAL CONFERENCE CALL

The parties are directed to contact the Board via e-mail at Trials@uspto.gov within one month of the date of this Scheduling Order if there is a need to discuss proposed changes to this Scheduling Order or proposed motions with the Board. *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).

B. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (*id.* § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 1. The patent owner is reminded that it must confer with the Board before filing a motion to amend. *Id.* § 42.121(a). The patent owner should contact the Board to request any such conference in sufficient time to ensure that the conference is conducted at least two weeks before DUE DATE 1. If the patent owner elects not to file either a response to the petition, the patent owner must inform the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised in the response, or any evidence not referred to, are deemed waived.

C. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

D. DUE DATE 3

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

E. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section III, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) by DUE DATE 4. Any request for oral argument (*id.* § 42.70(a)) must also be filed by this date.

F. DUE DATE 5

a. Each party must file any reply to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

G. DUE DATE 6

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

H. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE 7. The panel is available to hear oral argument, if requested, at the USPTO main office in Alexandria, Virginia at 2 p.m. ET.

II. CROSS-EXAMINATION

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

1. Cross-examination begins after any supplemental evidence is due. *See* 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. *See id.*

III. OBSERVATIONS ON CROSS-EXAMINATION

Observations on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

IV. MOTION TO AMEND

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. *See* 37 C.F.R. § 42.121(a). Patent Owner should arrange for a conference call with the panel and opposing counsel at least two weeks before DUE DATE 1 in order to satisfy this requirement.

Under 37 C.F.R. §§ 42.24 and 42.121, a motion to amend, if filed in this proceeding, as well as petitioner's opposition to the motion to amend, each are limited to twenty-five (25) pages; patent owner's reply to the

opposition to the motion to amend is limited to twelve (12) pages; and the claim listing may be contained in an appendix to the motion to amend, and does not count toward the page limit of the motion.

IV. INTERLOCUTORY DISPUTES

To the extent that a dispute arises between the parties during the trial, the parties shall meet and confer to resolve such dispute before contacting the Board. If attempts to resolve the dispute fail, a party may request a conference call with the Board and the other party in order to seek authorization to move for relief. In any request for a conference call with the Board, the requesting party shall: (a) certify that it has conferred with the other party in an effort to resolve the dispute; (b) identify with specificity the issues for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose specific dates and times at which both parties are available for the conference call.

DUE DATE APPENDIX

INITIAL CONFERENCE CALLUpon Request

DUE DATE 1 November 20, 2017
Patent owner's response to the petition
Patent owner's motion to amend the patent

DUE DATE 2February 20, 2018
Petitioner's reply to patent owner's response to petition
Petitioner's opposition to motion to amend

DUE DATE 3March 19, 2018
Patent owner's reply to petitioner's opposition to motion to amend

DUE DATE 4April 9, 2018
Motion for observation regarding cross-examination of reply witness
Motion to exclude evidence

REQUEST FOR ORAL ARGUMENT April 9, 2018

DUE DATE 5 April 23, 2018
Response to observation
Opposition to motion to exclude

DUE DATE 6April 30, 2018
Reply to opposition to motion to exclude

DUE DATE 7May 16, 2018
Oral argument (if requested)

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PETITIONER:

Michael R. Houston, Ph.D.
Joseph P. Meara, Ph.D.
James P. McParland, Ph.D.
FOLEY & LARDNER LLP
mhouston@foley.com
jmeara@foley.com
jmcparland@foley.com

Tyler C. Liu
ARGENTUM PHARMACEUTICALS LLC
tliu@agpharm.com

FOR PATENT OWNER:

Dennies Varughese
Deborah A. Sterling
Adam C. LaRock
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
dvarughe-PTAB@skgf.com
dsterlin-PTAB@skgf.com
alarock-PTAB@skgf.com