

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELYSIUM HEALTH, INC.,
Petitioner,

v.

TRUSTEES OF DARTMOUTH COLLEGE,
Patent Owner.

Case IPR2017-01795
Patent 8,383,086 B2

Before, SUSAN L. C. MITCHELL, CHRISTOPHER G. PAULRAJ, and
JOHN E. SCHNEIDER, *Administrative Patent Judges*.

SCHNEIDER, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

Patent Owner and Petitioner both request an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 3 and 35. The requests are *granted* to the extent set forth below and subject to the following conditions.

Oral argument shall commence at **1:00 PM Eastern Time on October 2, 2018**, on the 9th floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

Petitioner requests sixty minutes for argument. Paper 35. Patent Owner has not requested a specific amount of time for argument. Paper 34. 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. 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 September 28, 2018, 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 September 28, 2018, 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 four (4) days before the hearing date. Please also provide a courtesy copy of any demonstrative exhibits to the Board at least four (4) days prior to the hearing by emailing them to Trials@uspto.gov. The parties are directed to refrain from filing demonstrative exhibits in the record of this proceeding.

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 two (2) 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.

At least one member of the panel will attend the hearing electronically from a remote location 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 screen 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 Board no later than two (2) days prior to the oral hearing to discuss the matter.

The parties request permission to use certain audio/visual equipment to display exhibits during the oral hearing. Papers 34 and 35. Those requests, and any other special requests for audiovisual equipment, should be directed to 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 34 and 35) 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 Eastern Time on October 2, 2018.

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