

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TRIVASCULAR, INC.  
Petitioner

v.

SHAUN L. W. SAMUELS  
Patent Owner

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Case IPR2013-00493  
Patent 6,007,575

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Before TONI R. SCHEINER, RICHARD E. RICE, and  
SCOTT E. KAMHOLZ, *Administrative Patent Judges*.

KAMHOLZ, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
37 C.F.R. § 42.5

Petitioner requested a conference call to present its objections to the propriety of Patent Owner's demonstrative Exhibits 2005 (pages 7-12, 15, 19, and 20), 2006, and 2007. *See* email chain, attached. A conference call was conducted on August 29, 2014. For the reasons given below, Petitioner's objections are sustained-in-part and overruled-in-part.

Petitioner argues that the material presented on pages 7-11 and 15 of Exhibit 2005, as well as the entirety of the animations presented in Exhibits 2006 and 2007, have not been presented earlier in the record. Petitioner argues that it is unfairly prejudiced by Patent Owner's late introduction of material not previously made of record in the proceeding, principally because it has not had an opportunity to subject the material to expert witness scrutiny. Petitioner argues also that the fifth excerpt on page 12 of Exhibit 2005 is not an exact quotation of the cited material. Petitioner argues further that the material quoted on pages 19 and 20 concerns evidence not properly cited or relied upon by either party elsewhere in the record.

Patent Owner concedes that the material on pages 7-11 and 15 of Exhibit 2005, and the animations presented in Exhibits 2006 and 2007, do not appear earlier in the record, but it argues that this material adds no new information and simply presents, in different form, information previously made of record. With reference to pages 7-11 of Exhibit 2005, Patent Owner argues that each page is a reproduction of Figure 2 of the '575 patent, with reference numbers removed and others added. With reference to page 15, Patent Owner argues that it is an enlargement of a portion of Ex. 2004.

With reference to Exhibit 2006, Patent Owner argues that is a straightforward animation of Figures 5a-d and 6a-d. With reference to Exhibit 2007, Patent Owner argues that this animation visually replicates its arguments concerning inflation of the claimed stent.

Upon consideration of the parties' arguments, we agree with Petitioner that pages 7-11 and 15 of Exhibit 2005, and the entirety of the animations in Exhibits 2006 and 2007, improperly display material not made of record previously in this proceeding. Patent Owner is barred from using, citing, or relying upon this material during the hearing. Patent Owner may replace the barred material, however, with evidence that was made of record timely in the case. For example, Patent Owner may use the version of Figure 2 as printed in the '575 patent in place of pages 7-11 of Exhibit 5, and the printed versions of Figures 5a-d and 6a-d in place of Exhibit 2006.

With respect to page 12 of Exhibit 2005, we agree with Petitioner that the fifth paragraph is not an exact reproduction of the cited record evidence. Patent Owner may present a revised version of this page with the fifth paragraph corrected.

The material quoted on pages 19 and 20 appears to be reproduced exactly from the cited record evidence. Whether this evidence is relied upon by the parties goes to whether the evidence will be given consideration in reaching a final disposition of this proceeding, not whether it may be presented in demonstrative exhibits.

Exhibits 2005, 2006, and 2007 will be expunged from the record. Patent Owner is authorized to submit a new demonstrative exhibit to replace

Exhibit 2005. The replacement exhibit should be given the next available exhibit number and must be filed and served before the oral hearing commences. *See* 37 C.F.R. § 42.70(b). The replacement exhibit may not contain any of the barred information and may not otherwise differ in substance from Exhibit 2005 except as authorized herein.

Accordingly, it is

ORDERED that Petitioner's objection to Patent Owner's Exhibits 2006 and 2007 is *sustained*;

FURTHER ORDERED that Petitioner's objection to Patent Owner's Exhibit 2005 is *sustained* as to pages 7-12 and 15, and *overruled* as to pages 19 and 20;

FURTHER ORDERED that Exhibits 2005, 2006, and 2007 be expunged;

FURTHER ORDERED that Patent Owner is barred from using any material from pages 7-11 and 15 of Exhibit 2005, or from Exhibits 2006 and 2007, during the oral hearing;

FURTHER ORDERED that Patent Owner is authorized to submit a new demonstrative exhibit to replace Exhibit 2005, using the next available exhibit number, in which slides 7-12 and 15 have been replaced with corrected pages that present no information other than exact reproductions of evidence made of record timely in this proceeding; and

FURTHER ORDERED that Patent Owner's new demonstrative exhibit must be filed and served no later than the time of oral argument.

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For PETITIONERS:

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**From:** Everett Diederiks [<mailto:ediederiks@dwpatentlaw.com>]  
**Sent:** Thursday, August 28, 2014 4:59 PM  
**To:** Kattula, Amy; [dscola@hbiplaw.com](mailto:dscola@hbiplaw.com); [mchakansky@hbiplaw.com](mailto:mchakansky@hbiplaw.com);  
[jpetruzzi@masonpetruzzi.com](mailto:jpetruzzi@masonpetruzzi.com)  
**Subject:** RE: Conference Call re: Request to present objections to Patent Owner's Demonstratives at a Conference - IPR2013-00493 - 8/29/14 at 1 p.m. Eastern - Dial-in info.

Dear Ms. Kattula:

The Patent Owner objects to this established conference call. I was only notified in an email sent 11:19 AM today of an intent on the part of the Petitioner to even request a conference. In that email, we were questioned only "Are there times when you are not available tomorrow". Approximately 1 hour later, before Patent Owner co-counsel could even be contacted regarding any availability on short notice, the hearing request was filed by the Petitioner.

The PRPS procedures are clear that, prior to submitting any request for a conference call, a party must determine whether the opposing party or parties opposes the request, and include times when all parties are available. In fact, it is a provision that the request itself must specify that these two requirements have been met. Our understanding of the first part of this procedure is a requirement for the parties to at least try to work out any differences themselves prior to involving the Trial Board, while the second part assures that each party can be appropriately represented. Neither of these mandated requirements have been met by Petitioners.

Currently, a hearing has been unilaterally set for 1 PM tomorrow. Although I would likely be able to re-arrange my current schedule to attend the conference call if mandated, particularly to present opposition to Petitioner's request, it is desired that co-counsel Jim Petruzzi also be present as per other conferences to date. At this time, I am not aware if Mr. Petruzzi can be present.

Respectfully,

Everett Diederiks



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**IMPORTANT MESSAGE - RECIPIENT, PLEASE READ CAREFULLY**

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**From:** Kattula, Amy [<mailto:Amy.Kattula@USPTO.GOV>]

**Sent:** Thursday, August 28, 2014 2:45 PM

**To:** [dscola@hbiplaw.com](mailto:dscola@hbiplaw.com); [mchakansky@hbiplaw.com](mailto:mchakansky@hbiplaw.com); [ediederiks@dwpatentlaw.com](mailto:ediederiks@dwpatentlaw.com); [jpetruzzi@masonpetruzzi.com](mailto:jpetruzzi@masonpetruzzi.com)

**Subject:** Conference Call re: Request to present objections to Patent Owner's Demonstratives at a Conference - IPR2013-00493 - 8/29/14 at 1 p.m. Eastern - Dial-in info.

Dial-in #

877-934-8037

Passcode

9450035

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**From:** Chakansky, Michael [<mailto:mchakansky@hbiplaw.com>]

**Sent:** Thursday, August 28, 2014 12:23 PM

**To:** Trials

**Cc:** 'ediederiks@dwpatentlaw.com'; 'jpetruzzi@masonpetruzzi.com'; 'ipr@masonpetruzzi.com'; Scola, Daniel; Chakansky, Michael

**Subject:** Request to present objections to Patent Owner's Demonstratives at a Conference - IPR2013-00493

To whom it may concern:

Petitioner in IPR2013-00493 hereby requests, pursuant to Paper 32, Order of Trial Hearing, pp. 2-3, a conference with the Board to present its objections regarding the propriety of Patent Owners Demonstratives, denoted Exhibits 2005, 2006 and 2007. Petitioner objects, without limitation, to at least Patent Owner's Exhibit 2005 slides (pages) 7-12, 15,19, and 20, and in their entirety the Exhibits 2006 and 2007 animations.

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Due to the holiday on Monday September 1 and the requirement for a conference call at least two business days before the September 3 Oral Hearing, **Petitioner requests a conference before the Board anytime tomorrow Friday August 29<sup>th</sup>, or whenever the Board deems appropriate.**

If the Board would like more details, in advance, about the specific objections, please let me know.

Thank you.

Respectfully requested,

Michael Chakansky.

Copy by email to counsel for Patent Owner.

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