

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GUARDANT HEALTH, INC.,  
Petitioner,

v.

FOUNDATION MEDICINE, INC.,  
Patent Owner.

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Case IPR2017-01170 (Patent 9,340,830 B2)  
Case IPR2017-01447 (Patent 9,340,830 B2)  
Case IPR2017-01448 (Patent 9,340,830 B2)<sup>1</sup>

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Before SUSAN L.C. MITCHELL, TINA E. HULSE, and  
RICHARD J. SMITH, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

ORDER  
Trial Hearing  
37 C.F.R. § 42.70

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<sup>1</sup> This order addresses issues that are common to all three cases. We, therefore, issue a single order that has been entered in each case.

Pursuant to our prior scheduling order, oral argument is scheduled to be held on June 13, 2018, if requested by the parties. Paper 18, 4; Paper 19, 2.<sup>2</sup> Petitioner and Patent Owner have both requested oral argument. Papers 51, 52. The requests are *granted*.

The oral argument will commence at 1:00 PM Eastern Daylight Saving Time (10:00 AM Pacific Daylight Saving Time), on Wednesday, June 13, 2018, at the USPTO Silicon Valley office, 26 S. Fourth Street, San Jose, CA 95113. The oral argument will be open to the public for in-person attendance, which will be accommodated on a first-come, first-served basis.

Each party will have 45 minutes to present arguments and may determine for itself how to divide the time between the three cases. Petitioner bears the ultimate burden of proof that Patent Owner's patent claims at issue are unpatentable. Therefore, at oral argument, Petitioner will proceed first to present its case with respect to the challenged patent claims and the grounds on which the Board instituted trial. Petitioner may reserve some of its argument time for rebuttal. Patent Owner will then respond to Petitioner's initial presentation. Finally, Petitioner may use the time it has reserved to reply to Patent Owner's presentation.

The Board will provide a court reporter for the oral argument, and the reporter's transcript will constitute the official record of the oral argument. The hearing transcript will be entered in the record of this proceeding.

The parties shall serve any demonstrative exhibits on opposing counsel at least seven business days before the hearing. The parties shall also provide a courtesy copy of any demonstrative exhibits to the Board no

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<sup>2</sup>Paper numbers cited in this order refer to those documents filed in IPR2017-01170. Similar papers were filed in the other two proceedings.

later than three business days before the hearing by emailing them to Trials@uspto.gov. Notwithstanding 37 C.F.R. § 42.70(b), the parties shall not file any demonstrative exhibits in these proceedings without prior authorization from the Board.

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties shall confer with each other regarding any objections to demonstrative exhibits. For any issue that cannot be resolved after conferring, the parties may each file a one-page list of objections at least three business days before the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement of the reason for each objection. No argument or further explanation is permitted.

The Board will consider the objections and schedule a telephone conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

The parties are advised that at least one member of the panel will be attending the hearing from a remote location. The parties are reminded that the presenter 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 the ability of the judge participating remotely to follow the presenter's arguments. The

parties should note that the remote judge will not be able to see what is projected on the screen in the hearing room.

The Board expects lead counsel for each party to be present at oral hearing, although any backup counsel may make the actual presentation, in whole or in part. If lead counsel for either party will not be in attendance at oral hearing, the Board should be notified via a joint telephone conference call no later than two business days before the oral hearing to discuss the matter.

The parties may request the use of audio-visual equipment during the oral hearing. Formal requests are to be made five business days in advance of the hearing date and should be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov). If the request is not timely, the equipment may not be available on the day of the hearing.

**PETITIONER:**

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