

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHATSAPP INC. and FACEBOOK, INC.,
Petitioner,

v.

TRIPLAY, INC.,
Patent Owner.

Case IPR2015-00740
Patent 8,332,475 B2

Before BRIAN J. McNAMARA, PATRICK R. SCANLON, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

IPPOLITO, *Administrative Patent Judge*.

ORDER
Request for Oral Argument
37 C.F.R. § 42.70

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Petitioner and Patent Owner have each requested an oral hearing for *inter partes* review proceeding IPR2015-00740. Papers 44, 46. Petitioner requests thirty (30) minutes and Patent Owner requests sixty (60) minutes for their respective presentations. Upon review of the issues that the parties intend to address during the hearing, we determine that forty-five (45) minutes should be more than sufficient to address these issues as well as any others that may be raised by the Board, including any means-plus-function limitation issues. *See* Paper 23, 5 (instructing the parties to address the impact of *Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015) in their respective briefing). Accordingly, each party will have forty-five (45) minutes of total time to present its arguments.

Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in this review are unpatentable. Petitioner will, therefore, begin by presenting its case regarding the challenged claims and grounds for which the Board instituted trial in the proceeding. Patent Owner will then respond to Petitioner's arguments. Petitioner may reserve time to respond to arguments presented by Patent Owner.

The hearing will commence at 1:00 PM Eastern Time, on May 19, 2016, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

There is a strong public policy interest in making all information presented in these proceedings public, as the review determines the patentability of claims in an issued patent and, thus, affects the rights of the public. This policy is reflected in part, for example, in 35 U.S.C. § 316(a)(1)

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and 35 U.S.C. § 326(a)(1), which provide that the file of any *inter partes* review or post grant review be made available to the public, except that any petition or document filed with the intent that it be sealed shall, if accompanied by a motion to seal, be treated as sealed pending the outcome of the ruling on the motion. Accordingly, we exercise our discretion to make the oral hearing publically available via in-person attendance.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served *five* (5) business days before the hearing. Demonstrative exhibits are not evidence and may not introduce new evidence or arguments. Instead, demonstrative exhibits should cite to evidence in the record. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), and *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118), regarding the appropriate content of demonstrative exhibits. 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. Any issue regarding demonstrative exhibits should be resolved at least *three* business days prior to the hearing by way of a joint telephone conference call to the Board. The parties are responsible for requesting such a conference sufficiently in advance of the hearing to accommodate this requirement. Any objection to demonstrative exhibits that is not timely presented will be considered waived. Demonstratives should be filed at the Board no later than *two* (2) business days prior to the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

Questions regarding specific audio-visual equipment should be

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directed to the Board at 571-272-9797. **Requests for audio-visual equipment are to be made five (5) days in advance of the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.**

The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location, and that if a demonstrative is not filed or otherwise made fully available or visible to the judge presiding over the hearing remotely, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at 571-272-9797. Furthermore, because of limitations on the audio transmission systems in the hearing rooms, the presenter may speak only when standing at the hearing room podium.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, lead or backup counsel may present the party's argument. If either party anticipates that its lead counsel will not be attending the oral hearing, the parties should initiate a joint telephone conference with the Board no later than two (2) business days prior to the oral hearing to discuss the matter.

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