

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

APPLICATIONS IN INTERNET TIME, LLC,
Patent Owner.

Case IPR2015-01750
Patent 8,484,111 B2

Case IPR2015-01751
Case IPR2015-01752
Patent 7,356,482 B2¹

Before LYNNE E. PETTIGREW, MITCHELL G. WEATHERLY, and
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

ORDER
Oral Argument
37 C.F.R. §§ 42.5, 42.70

¹ This order addresses issues common to all cases; therefore, we issue a single order to be entered in each case.

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The captioned proceedings have been remanded to the Board by the Federal Circuit. *See Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018). The parties previously submitted a joint proposal for a briefing schedule in the remanded proceedings, including a request for an Oral Hearing. *See* Ex. 3003². By previous Order (Paper 93), the date for Oral Hearing was set as April 25, 2019. This Order sets forth further details regarding the Oral Hearing.

Because the issues on remand are the same in each proceeding, the hearing shall be a consolidated hearing. **The hearing will commence at 1:00 pm Eastern Time, on Thursday, April 25, 2019**, and will be conducted at the **USPTO Headquarters in Alexandria, Virginia** (the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, 22314). To facilitate presentation of argument and evidence relating to confidential information, the hearing will be closed to the public. Only persons authorized to access confidential information shall be permitted in the courtroom during the hearing. *See* Paper 50 (Order entering Board's default Protective Order); Paper 58, 11–13 (setting forth changes to the default Protective Order), 15 (Order entering revised Protective Order); Ex. 3001 (revised Protective Order). At least one judge may participate in the hearing via videoconference from a remote location; counsel for the parties, however, must appear in person. The Board will provide a court

² Citations herein are to the papers and exhibits filed in IPR2015-01750. The same or similar papers and exhibits also have been filed in IPR2015-01751 and IPR2015-01752.

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reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.³

Each side will have forty-five (45) minutes to present its argument. Petitioner will proceed first, presenting its arguments related to the issues on remand in this proceeding (*see* Paper 84), and may reserve rebuttal time. Thereafter, Patent Owner will respond to Petitioner's arguments. Thereafter, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments; Petitioner may not reserve more than half its total time allotted for rebuttal.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days prior to the hearing. Demonstrative exhibits are visual aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide may be marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. Demonstrative exhibits may not be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the "Board was obligated to dismiss [the petitioner's] untimely argument . . . raised for the first time during oral argument"). Instead, demonstrative exhibits should cite to the briefs and evidence in the record. Demonstrative exhibits, marked

³ The parties will have an opportunity to review the transcript for any confidential information, and to file a Motion to Seal if desired, prior to the transcript being made public. The Board will provide a deadline for such a Motion when the transcript is available.

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as noted above, should be filed as exhibits and in accordance with 37 C.F.R. § 42.70(b), and no later than April 24, 2019.⁴

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. Each party also shall provide a hard copy of its demonstrative exhibits to the court reporter at the hearing. There is no need to provide a hard copy of the demonstrative exhibits for the panel. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

For any objections to demonstrative exhibits that cannot be resolved after conferring with the opposing party, the parties may file jointly a one-page list of objections, no later than April 23, 2019. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one sentence) of the reason for each objection. No argument or further explanation is permitted. We will reserve ruling on the objections until the hearing, or after the hearing. Any objection to demonstrative exhibits that is not presented timely will be considered waived. As demonstrative exhibits are not themselves evidence, the Board asks the parties to confine demonstrative

⁴ The parties are reminded of our instructions regarding the filing of confidential information (*see, e.g.*, Paper 58, 13). If any confidential information is included in demonstrative exhibits, they should be filed using the appropriate availability indicator in PTAB End-to-End (*e.g.*, “Board and Parties Only”). A single Motion to Seal may be filed addressing the hearing transcript, as well as the demonstrative exhibits, if necessary.

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exhibit objections to those identifying egregious violations that are prejudicial to the administration of justice.

The parties are reminded that each 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. The parties should note that at least one member of the panel will be attending the hearing electronically from a remote location; a judge appearing remotely will not be able to view the screen in the hearing room and will not be able to hear the parties unless they speak into the microphone at the podium. 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.

The Board expects lead counsel for each party to be present in person at the hearings, although any backup counsel may make the actual presentation, in whole or in part. If either party anticipates that its lead counsel will not be attending the oral arguments, that party should contact the Board by e-mail at Trials@uspto.gov no later than two days prior to the hearing to initiate a joint telephone conference with the other party and the Board to discuss the matter.

The parties are reminded to direct their requests for audio-visual equipment to Trials@uspto.gov. Requests for special equipment will not be honored unless presented in a separate communication directed to the above email address not less than five days before the hearing. If the request is not received timely, the equipment may not be available on the day of the hearing.

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