

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC., HTC CORPORATION, HTC AMERICA, INC.,
MICROSOFT CORPORATION, MICROSOFT MOBILE OY,
MICROSOFT MOBILE, INC., SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., and ZTE (USA) INC.,
Petitioners,

v.

EVOLVED WIRELESS LLC,
Patent Owner.

Cases IPR2016-01208¹ and IPR016-01209²
Patent 7,746,916 B2

Before CHRISTOPHER L. CRUMBLEY, PATRICK M. BOUCHER, and
TERRENCE W. McMILLIN, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge*.

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

¹ IPR2016-01277 has been consolidated with this proceeding.

² IPR2016-01280 has been consolidated with this proceeding.

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The date set for oral hearing is September 15, 2017. IPR2016-01208, Paper 9; IPR2016-01209, Paper 9. The parties request oral hearing. IPR2016-01208, Papers 18, 19; IPR2016-01209, Papers 18, 19. The requests are *granted*.

These cases involve one patent, and there is overlap in the cited art and the Petitioners' arguments. IPR2016-01208, Papers 2, 7; IPR2016-01209, Papers 2, 7. IPR2016-01277 was consolidated with IPR2016-01208, and IPR2016-01280 was consolidated with IPR2016-01209, because the petitions were, respectively, identical in substance and limited to the same claims, grounds, arguments, and evidence. IPR2016-01277, Paper 8; IPR2016-01280, Paper 8. The Petitioners, pursuant to the Board's Orders (*id.*), filed a joint Reply on behalf of all the Petitioners in IPR2016-01208 (Paper 17) and in IPR2016-01209 (Paper 17) and a joint Request for Oral Argument on behalf of all the Petitioners in IPR2017-01208 (Paper 19) and in IPR2016-01209 (Paper 19). Accordingly, the time allotted to Petitioners for argument is to be shared by all the Petitioners.

The Petitioners are ordered to confer and reach agreement as to one attorney who shall argue on behalf of all the Petitioners. If the Petitioners are unable to reach agreement as to who shall argue on behalf of all the Petitioners, the parties should request a joint telephone conference with the Board no later than 10 days prior to the oral hearing to discuss the matter.

Petitioners will have 60 minutes, total, to present their argument and may allocate time between the instituted grounds in IPR2016-01208 and IPR2016-01209 as they see fit. Patent Owner will have 60 minutes, total, to present its argument. Petitioners bear the ultimate burden of proof that Patent Owner's claims at issue in these reviews are unpatentable. Therefore,

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Petitioners will open the hearing by presenting their argument. After Petitioners' presentation, Patent Owner will respond to Petitioners' argument. Petitioners may reserve time to respond to Patent Owner's argument. Patent Owner may not reserve time.

The hearing will commence at 10 AM Eastern Time on September 15, 2017, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. At least one member of the panel may be attending the oral argument remotely by use of two-way audio-visual communication equipment. 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, the parties should request a joint telephone conference with the Board no later than 10 days prior to the oral hearing to discuss the matter.

The parties are reminded that, under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been so filed.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing date. Notwithstanding 37 C.F.R. § 42.70(b), each party also shall file its demonstrative exhibits with the Board as a separate paper at least two business days prior to the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing, but hard copies of the demonstratives are not needed for the judges.

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, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. 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 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.

The parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits. Any party with unresolved objections to a demonstrative exhibit must file a list of those objections with the Board at least two business days before the hearing. For each objection, the list must identify with particularity which portions of the exhibits are subject to the objection and may include a short, one-sentence statement explaining the objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections.

Generally, the Board expects lead counsel for each party to be present in person at the oral hearing. Patent Owner states in its Request that it anticipates that its lead counsel will not be present at oral hearing in this case, and that backup counsel will present argument. Given that Patent Owner's backup counsel is a registered practitioner, has signed Patent Owner's merits briefing, and has participated extensively in prior conferences with the Board in these matters, attendance by lead counsel is not required at the oral hearing. If any Petitioner expects that its lead

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counsel will not be attending the oral hearing, the parties should request a joint telephone conference with the Board no later than 10 days prior to the oral hearing to discuss the matter.

Any special requests for audio-visual 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 five days before the hearing directed to the above email address.

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