

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., MICROSOFT CORPORATION,
MICROSOFT MOBILE OY, and
MICROSOFT MOBILE INC. (F/K/A NOKIA INC.),
Petitioner,

v.

EVOLVED WIRELESS LLC,
Patent Owner.

Case IPR2016-01228
Case IPR2016-01229¹
Patent 7,881,236 B2

Before WILLIAM V. SAINDON, PATRICK M. BOUCHER, and
TERRENCE McMILLIN, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

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

¹ The parties are not authorized to use this style of caption.

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The date set for oral hearing in each of these proceedings is September 15, 2017, if hearing is requested by either party and granted by the Board. Paper 9.² Both parties request oral hearing. Papers 17, 18. The requests are *granted*.

Because each of these proceedings involves the same patent, a consolidated oral argument will be held. Each side will have 45 minutes, total, to present its argument, and may allocate its time among the two proceedings as it wishes. Any representation made by counsel at the consolidated oral argument is applicable to and useable in all proceedings that have underlying basis for the representation.

Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in these reviews are unpatentable. Accordingly, Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. After Petitioner's presentation, Patent Owner will respond to Petitioner's argument. Petitioner may reserve time to respond to Patent Owner's argument. Patent Owner may not reserve time.

The hearing will commence at 2 PM 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

² The relevant paper numbers are the same in both proceedings.

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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, they are requested to contact the Board at least 10 days in advance of the 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. Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing date. The parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits.

Any party with unresolved objections 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 demonstrative 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. Any objection to demonstrative exhibits not timely presented will be considered waived.

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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.

Generally, the Board expects lead counsel for each party to be present in person at the oral hearing. Patent Owner states in its Requests that it anticipates that its lead counsel will not be present at oral hearing in these cases, and that backup counsel will present argument. Given that Patent Owner's backup counsel is a registered practitioner and has signed Patent Owner's merits briefing, attendance by lead counsel at the oral hearing is excused. If Petitioner expects that its lead 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.

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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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