

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HP INC.,
Petitioner,
v.

JAMES B. GOODMAN,
Patent Owner.

Case IPR2017-01994
Patent 6,243,315 B1

Before BRIAN J. McNAMARA, PATRICK M. BOUCHER, and
KIMBERLY McGRAW, *Administrative Patent Judges*.

McGRAW, *Administrative Patent Judge*.

ORDER
Trial Oral Hearing
35 U.S.C. § 316(a)(10)

The Scheduling Order for the above-listed case sets the date for the oral hearing as November 16, 2018. Paper 7. Each party requested an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 11, 12. The parties' requests for an oral hearing are *granted*.

The oral hearing will commence at 10:00 AM, on November 16, 2018. As requested by each party, each party will have a total of thirty (30) minutes to present its arguments. *See* Paper 13. Petitioner bears the ultimate burden of proof that the claims under review in these cases are unpatentable. Therefore, Petitioner will proceed first, and Patent Owner will follow. Petitioner may then use any time Petitioner reserved for rebuttal. Absent special circumstances, Petitioner will not be permitted to reserve for rebuttal more than half the total time allotted for argument. Patent Owner may request a brief sur-rebuttal.

The oral hearing will be open to the public for in-person attendance, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. In-person attendance will be accommodated on a first come, first serve basis. The Board will provide a court reporter for the oral hearing and the reporter's transcript will constitute the official record of the oral hearing.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served on opposing counsel at least seven business days before the hearing. The parties also shall provide the demonstrative exhibits to the Board at least three business days prior to the hearing by emailing them to Trials@uspto.gov. Notwithstanding § 42.70(b), the parties shall not file any demonstrative exhibits in this proceeding without prior authorization from the Board.

The Board reminds the parties that demonstrative exhibits are not evidence, but are intended to assist the parties in presenting their oral arguments to the Board. The Board also reminds the parties that demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accelaron, 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”).

We expect that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved, the parties may file any objections to demonstratives with the Board at least three business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. We will consider any objections and schedule a conference call if deemed necessary. Otherwise, we will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely filed will be considered waived. Each party shall provide a hard copy of their demonstratives to the court reporter at the hearing.

It is possible that at least one member of the panel will be attending the hearing via remote video link. Physical exhibits and the projector screen will not be viewable to this judge. The parties should prepare accordingly. 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 assist any member of the panel attending remotely and to ensure the clarity and accuracy of the reporter's transcript. The parties also should note that a panel member appearing remotely 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 available and visible to all of the judges, the parties are invited to contact the Board.

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. At least one party has indicated that it desires to have audio-visual equipment available for use during the hearing. Requests for audio-visual equipment must be sent to Trials@uspto.gov, and any request not sent separately and specifically to that email address will not be considered. The request must be made no later than five days in advance of the hearing date. If the request is not received timely, the equipment may not be available on the day of the hearing.

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

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In light of the foregoing, it is:

ORDERED that the oral hearing, conducted pursuant to the procedures outlined above, shall commence at 10:00 AM (EST) on November 16, 2018.

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