

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVER INFORMATION INC. AND IPEVO, INC.,
Petitioner,

v.

PATHWAY INNOVATIONS AND TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2017-02108
Patent 8,508,751 B1

Before JONI Y. CHANG, THOMAS L. GIANNETTI, and
NORMAN H. BEAMER, Administrative Patent Judges.

BEAMER, *Administrative Patent Judge.*

ORDER
Trial Hearing
37 C.F.R. § 42.70

Aver Information Inc. and IPEVO, Inc. (“Petitioner”) and Pathway Innovations and Technologies, Inc. (“Patent Owner”) each request oral hearing pursuant to 37 C.F.R. § 42.70. Paper 21; Paper 22. This Order resolves those requests.

We grant the parties’ requests for oral hearing. Oral argument shall commence at 9:30 am Eastern Time on December 13, 2018, on the 9th floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

Petitioner and Patent Owner each shall have 45 minutes of total time to present arguments. The hearing will proceed as follows. Petitioner will open the hearing by presenting its case regarding the challenged claims and the proposed substitute claims. Patent Owner then will respond to Petitioner’s presentation. Petitioner may reserve rebuttal time (of no more than half its total argument time) to reply to Patent Owner’s arguments.

Patent Owner may reserve sur-rebuttal time (of no more than half its total argument time) to respond to Petitioner’s rebuttal.

The Board will provide a court reporter for the hearing, and the reporter’s transcript will constitute the official record of the hearing. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

The parties shall serve on opposing counsel demonstrative exhibits no later than December 6, 2018. 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. The parties shall not file any demonstrative exhibits in this proceeding without prior authorization from the Board. A hard copy of the demonstrative exhibits should be

provided to the court reporter at the hearing.

We remind the parties that demonstrative exhibits are not evidence, but are intended to assist the parties in presenting their oral arguments to the Board. We also remind the parties that demonstrative exhibits are not a mechanism for making arguments not previously addressed in the papers. 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, which must include citations to the record.

To the extent that the parties object to the propriety of any demonstrative exhibits, we expect the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If such objections cannot be resolved, the parties may file objections to demonstratives with the Board at least two business days before the hearing. The objections should identify with particularity the portions of each demonstrative exhibit subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No further argument or 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 presented will be considered waived.

At least one member of the panel may be attending the hearing electronically from a remote location and may not be able to view the projection screen in the hearing room. In particular, documents presented on the Elmo projector are not visible to remote judges, so please plan accordingly. If a demonstrative exhibit is not made available or visible to the judge(s) presiding over the hearing remotely, that demonstrative will not

be considered. 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 and for the benefit of the judge(s) presiding over the hearing remotely. Because of limitations of the audio transmission systems in our hearing rooms, the presenter may speak only when standing at the hearing room lectern.

No live witness testimony shall be taken at the oral argument. 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 expects 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.

Any requests for audiovisual equipment should be directed to Trials@uspto.gov. Requests for equipment will not be honored unless presented in a separate communication not less than three business days before the hearing, directed to the above email address.

It is

ORDERED that the parties' requests for oral hearing are granted subject to the conditions set forth in this Order; and

FURTHER ORDERED that an oral hearing, conducted pursuant to the procedures outlined above, shall commence at 9:30 am Eastern Time on December 13, 2018.

IPR2017-01605
Patent 7,166,253 B2

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