

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.
Petitioner,

v.

FALL LINE PATENTS, LLC
Patent Owner.

Case IPR2018-00043
Patent 9,454,748 B2

Before MICHELLE N. WORMMEESTER, SHEILA F. McSHANE, and
JOHN R. KENNY, *Administrative Patent Judges*.

KENNY, *Administrative Patent Judge*.

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

The date set for a requested oral hearing in this proceeding is
December 14, 2018. Paper 7. Both parties request, and we grant, an oral
hearing. Papers 11, 13.

Each side will have 60 minutes, total, to present its arguments.
Petitioner bears the ultimate burden of proof that Patent Owner's claims at
issue in this review 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.

The hearing will commence at 1 p.m. Eastern Time on December 14, 2018, 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, they are requested to contact the Board at least 10 days in advance of the hearing to discuss the matter.

At the hearing, each party may only rely upon evidence that was properly, previously submitted in the proceeding. Further, each party may only present arguments that were properly, previously presented in the papers in this proceeding. No new evidence or arguments may be presented at the hearing. *See* Paper 7, 3 ("any arguments for patentability not raised in the response will be deemed waived") (emphasis omitted).

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 to demonstrative exhibits 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 may schedule a conference call if deemed necessary. Otherwise, we may consider the objections at or after the hearing. Any objection to demonstrative exhibits not timely presented may be considered waived.

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.

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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 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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