

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

VILOX TECHNOLOGIES LLC,
Patent Owner.

Case IPR2018-00044
Patent 7,302,423 B2

Before SALLY C. MEDLEY, ROBERT J. WEINSCHENK, and
JOHN D. HAMANN, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

ORDER
Oral Hearing
35 U.S.C. § 316(a)(10) and 37 C.F.R. § 42.70

The Scheduling Order in this proceeding sets the date for the oral hearing as December 11, 2018. Paper 10. Each party requested an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 48, 50. The parties' requests for an oral hearing are *granted*.

The hearing will commence at 9:00 AM ET on December 11, 2018, on the ninth floor (Hearing Room D) of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Each party will have a total of sixty (60) minutes to present any arguments relating to this proceeding. Petitioner bears the ultimate burden of proof that the claims under review in this case are unpatentable. Patent Owner has filed a motion to amend. Paper 27. Therefore, Petitioner will open the hearing by presenting its case regarding the patentability of any claim at issue in the proceeding including original claims and any claims proposed in Patent Owner's Motion to Amend. Patent Owner will then respond to Petitioner's argument and also argue in support of its motion to amend claims. Patent Owner also may address its Motion to Exclude Evidence. Paper 49.

Petitioner may reserve time to respond to arguments presented by Patent Owner. 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 parties shall serve any demonstrative exhibits upon each other at least seven (7) business days prior to the hearing. The parties also shall

provide the demonstrative exhibits to the Board at least five (5) business days prior to the hearing by emailing them to Trials@uspto.gov.

Notwithstanding 37 C.F.R. § 42.70(b), the parties shall not file any demonstrative exhibits without prior authorization.

Demonstrative exhibits used at the hearing are aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide of a demonstrative exhibit may be marked with the words

“DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer.

Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. 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.

The parties are encouraged to resolve objections by exchanging proposed demonstrative exhibits and conferring prior to submitting the exhibits to the Board. Objections to demonstratives should be carefully considered and framed as the Board has not found that such objections are helpful in many cases. If any objections cannot be resolved, the parties must initiate a conference call with the Board at least two (2) business days prior to the hearing. Any objection to demonstrative exhibits that are not timely presented at least two (2) business days prior to the hearing will be considered waived.

The parties should note that at least one member of the panel may be attending the hearing electronically from a remote location and that, if a demonstrative is not submitted by email prior to the hearing, it may not be

IPR2018-00044
Patent 7,302,423 B2

fully available or visible to any judges attending remotely. The parties are reminded that the presenter must identify clearly and specifically any demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the ability of all judges to follow the presenter's arguments.

We expect lead counsel for each party to attend the hearing. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,758 (Aug. 14, 2012). However, any counsel of record in this proceeding may present the party's arguments. If either party anticipates that its lead counsel will not attend the hearing, the parties shall request and make themselves available for a conference call with the Board to occur no later than two (2) business days prior to the hearing to discuss the reasons for that lead counsel's absence.

Any requests regarding special equipment or needs, such as 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 directed to the identified email address not less than five (5) business days before the hearing.

IPR2018-00044
Patent 7,302,423 B2

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