

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTERN DIGITAL CORPORATION,
KINGSTON TECHNOLOGY COMPANY, INC.,
TOSHIBA CORPORATION,
TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC., and
APRICORN
Petitioner,

v.

SPEX TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2018-00082¹
Patent 6,088,802

¹ Kingston Technology Company, Inc., which filed a Petition in Case IPR2018-01003, has been joined as a petitioner in this proceeding. Toshiba Corporation, Toshiba America Electronic Components, Inc., and Apricorn, which filed a Petition in Case IPR2018-01067, have been joined as petitioners in this proceeding.

Case IPR2018-00082 (Patent 6,088,802)

Case IPR2018-00084 (Patent 6,003,135)

WESTERN DIGITAL CORPORATION,
TOSHIBA CORPORATION,
TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC., and
APRICORN
Petitioner,

v.

SPEX TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2018-00084²
Patent 6,003,135

Before LYNNE E. PETTIGREW, DANIEL N. FISHMAN, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*.

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

² Toshiba Corporation, Toshiba America Electronic Components, Inc., and Apricorn, which filed a Petition in Case IPR2018-01068, have been joined as petitioners in this proceeding.

Case IPR2018-00082 (Patent 6,088,802)

Case IPR2018-00084 (Patent 6,003,135)

Petitioner has requested one half hour for oral argument in each of the captioned proceedings, pursuant to 37 C.F.R. § 42.70. *See* IPR2018-00082, Paper 34; IPR2018-00084, Paper 33. Patent Owner notified the Board that it felt no hearing was required in IPR2018-00082 but that, if Petitioner’s request for a hearing was granted, Patent Owner requests one half hour of time for argument. IPR2018-00082, Paper 35. For Case IPR2018-00084, Patent Owner requests one half hour of time for argument. IPR2018-00084, Paper 33.

We grant the parties’ requests such that each party will be allocated one half hour (30 minutes) for argument in each of the captioned cases. The hearing for Case IPR2018-00082 will be held first, followed by the hearing for Case IPR2018-00084.

Both parties are cautioned that oral argument can only address issues raised in the filed papers. *See* 37 C.F.R. § 42.70 (“A party *may request oral argument on an issue raised in a paper* at a time set by the Board”) (emphasis added). In particular, in Case IPR2018-00082, Patent Owner waived its opportunity to file a Patent Owner’s Response. *See* IPR2018-00082, Paper 23. In view of that waiver, Petitioner’s request to file a Reply (IPR2018-00082, Paper 24) was denied because there were no issues raised by Patent Owner to which Petitioner could reply (IPR2018-00082, Paper 32). In view of the limited record of filings in IPR2018-00082, the Board requires that any argument presented by either party during oral argument for IPR2018-00082 be prefaced, or followed by, a clear identification of where the argument may be found in the record.

The hearing for these proceedings will commence at **1 pm Eastern Time on January 14, 2019**. Petitioner and Patent Owner each will have thirty (30) minutes of argument time for each captioned case—for a total of one hour for each of the captioned cases. Petitioner bears the ultimate burden of proof that the claims at

Case IPR2018-00082 (Patent 6,088,802)

Case IPR2018-00084 (Patent 6,003,135)

issue in this review are unpatentable. Therefore, at oral argument, Petitioner will proceed first to present its case regarding the challenged patent claims and the grounds on which the Board instituted trial in IPR2018-00082. Petitioner may reserve some (but not more than half) of its argument time to respond to any arguments presented by the Patent Owner. After Petitioner's initial presentation, if Patent Owner desires to participate in the hearing, Patent Owner will be given an opportunity to respond and also may reserve some of its argument time for sur-rebuttal. Thereafter, Petitioner may use any reserved time to reply to Patent Owner's presentation, and finally, Patent Owner may present a brief sur-rebuttal if it has reserved time. The same procedure will then be repeated for IPR2018-00084.

The hearing will be conducted on the **ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia**. The hearing will be open to the public for in-person attendance, which will be accommodated on a first-come, first-served basis. If the parties have concerns about disclosing confidential information, they are requested to contact the Board at least ten business days in advance of the hearing to discuss the matter.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing. The parties shall confer regarding any objections to demonstrative exhibits, and file demonstrative exhibits with the Board, as a separate exhibit in accordance with 37 C.F.R. § 42.63, at least five business days prior to the hearing.

Demonstrative exhibits are not evidence, but merely visual aids for use at the oral hearing. For any issue regarding the proposed demonstrative exhibits that cannot be resolved after conferring with the opposing party, the parties may file jointly a one-page list of objections at least five business days prior to the hearing.

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The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one concise sentence) of the reason for each objection. No argument or further explanation is permitted.

We will consider the objections and schedule a conference call, if necessary, to discuss them. Otherwise, we may expunge all demonstratives or allow only those that we do not find objectionable. Typically, however, we reserve ruling on the objections until the hearing or ruling is necessary to resolve the dispute. Any objection to demonstrative exhibits that is not presented timely will be considered waived. Each party also shall provide a hard copy of its demonstrative exhibits to the court reporter at the hearing.

The parties are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number and by content) referenced during each hearing to ensure the clarity and accuracy of the reporter's transcript. The parties also should note that Judges Fishman and Boudreau will each be attending the hearing electronically and will only have access to the courtesy copy of the demonstratives provided in advance, as referenced above. If a demonstrative is not made available to the Board in the manner indicated above, that demonstrative may not be available to each of the judges during the hearing and may not be considered. Further, images projected, using audio visual equipment in Alexandria, will not be visible to Judges Fishman and Boudreau. Because of limitations on the audio transmission systems in our hearing rooms, the presenter may speak only when standing at the hearing room podium. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at (571) 272-9797.

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