

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., LG ELECTRONICS, INC., HTC CORP., HTC AMERICA,
INC., and SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

Case IPR2018-00387 (Patent 7,653,508 B1),^{1,2}
Case IPR2018-00389 (Patent 8,712,723 B1),³
Case IPR2018-00424 (Patent 7,881,902 B1),⁴
Case IPR2018-01028 (Patent 7,881,902 B1)

Before SALLY C. MEDLEY, MIRIAM L. QUINN, JOHN F. HORVATH,
and SEAN P. O'HANLON, *Administrative Patent Judges*.⁵

O'HANLON, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ This Order applies to each of the listed cases. We exercise our discretion to issue one Order to be docketed in each case. The parties, however, are

IPR2018-00387 (Patent 7,653,508 B1)
IPR2018-00389 (Patent 8,712,723 B1)
IPR2018-00424 (Patent 7,881,902 B1)
IPR2018-01028 (Patent 7,881,902 B1)

Petitioner and Patent Owner each request oral hearing pursuant to 37 C.F.R. § 42.70 in each of the above four proceedings. IPR2018-00387, Papers 15, 16; IPR2018-00389, Papers 15, 16; IPR2018-00424, Papers 16, 17; IPR2018-01028, Papers 13, 14. The parties' requests are *granted*. Although these cases are not consolidated, the hearings for the captioned cases will be consolidated for efficiency and a single transcript will be provided for all cases.

The hearing will commence at 9:00 AM Central Time (10:00 AM Eastern Time) on Tuesday, April 2, 2019. The oral hearing will be open to the public for in-person attendance, on the first floor of USPTO Texas Regional Office, 207 South Houston St., Dallas, Texas 75202. The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing.

not authorized to use this caption for any subsequent papers absent prior authorization from the Board.

² LG Electronics, Inc., who filed a petition in IPR2018-01577, and HTC Corp. and HTC America, Inc., who filed a petition in IPR2018-01589, have been joined as Petitioners in IPR2018-00387.

³ LG Electronics, Inc., HTC Corp., and HTC America, Inc., who filed a petition in IPR2018-01458, have been joined as Petitioners in IPR2018-00389.

⁴ LG Electronics, Inc., HTC Corp., and HTC America, Inc., who filed a petition in IPR2018-01631, and Samsung Electronics America, Inc., who filed a petition in IPR2018-01653, have been joined as Petitioners in IPR2018-00424.

⁵ This is not an expanded panel. The panel for IPR2018-00389 consists of Judges Medley, Quinn, and O'Hanlon. The panels for the other proceedings consist of Judges Medley, Horvath, and O'Hanlon.

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Each party will have sixty (60) minutes of total time to present arguments in the consolidated hearing. Each side will present arguments for the four proceedings during the allotted time. As the party with the burden of proof and persuasion, Petitioner will proceed first to present its case with regard to the challenged claims and grounds set forth in the Petitions. Thereafter, Patent Owner may respond to Petitioner's case. Thereafter, Petitioner may use any of its remaining time for rebuttal regarding Patent Owner's arguments regarding the challenged claims. And, thereafter, Patent Owner may use any of its remaining time for sur-rebuttal, to respond to Petitioner's rebuttal arguments. The parties are reminded that arguments made during rebuttal and sur-rebuttal periods must be responsive to arguments the opposing party made in its immediately preceding presentation.

At least seven (7) business days prior to the hearing, each party shall serve on the other party any demonstrative exhibit(s) it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). At least three (3) business days prior to the hearing, the parties shall provide the demonstrative exhibits to the Board by emailing them to Trials@uspto.gov. The parties shall not file any demonstrative exhibits in this case without prior authorization from the Board.

Demonstrative exhibits used at the oral 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

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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”).

The parties should attempt to work out any objections to demonstratives prior to involving the Board. Should either party disagree with the propriety of any of the opposing party’s demonstratives, the party may send, contemporaneously with their own slides, and three (3) business days prior to the hearing, an email to Trials@uspto.gov including a paper limited to identifying the opposing party’s slide(s) objected to and a brief sentence as to the general basis of the objection(s). No further argument is permitted in that paper. The Board will then take the objections under advisement, and if the content is inappropriate, it will not be considered. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The Board asks the parties to confine demonstrative exhibit objections to those identifying egregious violations that are prejudicial to the administration of justice. The parties are directed to *St. Jude Med., Cardiology Div., Inc. v. The Board of Regents of the Univ. of Mich.*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. In general, if the content on a slide cannot be readily associated with an argument made, or evidence referenced, in a substantive paper, it is inappropriate. The best practice is to indicate on each slide where support may be found in a substantive paper and/or an exhibit of record in this proceeding.

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The parties are reminded that 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. The parties also 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 made fully available or visible to all judges at the hearing, that demonstrative will not be considered. 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.

The Board expects lead counsel for each party to be present in person at the hearing. If a 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 (2) business days prior to the oral hearing to discuss the matter. Any counsel of record, however, may present the party's arguments.

Per the recent update to the Office Patent Trial Practice Guide, either party may request a pre-hearing conference. Office Patent Trial Practice Guide, August 2018 Update, 83 Fed. Reg. 39,989 (Aug. 13, 2018) (found at the following link to the USPTO website: <https://go.usa.gov/xU7GP>). Requests for a pre-hearing conference must be made by March 22, 2019. To request such a conference, an email should be sent to Trials@uspto.gov including several dates and times of availability for both parties that are generally no later than three (3) business days prior to the oral hearing.

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