

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC, ZTE (USA), INC.,
SAMSUNG ELECTRONICS CO., LTD.,
LG ELECTRONICS INC., HUAWEI DEVICE USA, INC.,
HUAWEI DEVICE CO. LTD., HUAWEI TECHNOLOGIES CO. LTD.,
HUAWEI DEVICE (DONGGUAN) CO. LTD.,
HUAWEI INVESTMENT & HOLDING CO. LTD.,
HUAWEI TECH. INVESTMENT CO. LTD., and
HUAWEI DEVICE (HONG KONG) CO. LTD.,
Petitioner,

v.

CYWEE GROUP LTD,
Patent Owner.

Case IPR2018-01257 (Patent 8,552,978 B2)
Case IPR2018-01258 (Patent 8,441,438 B2)

Before PATRICK M. BOUCHER, KAMRAN JIVANI, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

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

IPR2018-01257 (Patent 8,552,978 B2)

IPR2018-01258 (Patent 8,441,438 B2)

Under the Scheduling Order, the date set for oral hearing in these proceedings is September 13, 2019, if hearing is requested by either party and granted by the Board. Paper 9.¹ Both parties request oral hearing. Papers 43, 54. The requests are *granted*.

Procedure

A consolidated oral argument will be held for both proceedings. Each side will have 75 minutes, total, to present its argument, and may allocate its time among the proceedings as it wishes. Any representation made by counsel at the consolidated oral argument is applicable to and useable in all proceedings that have underlying basis for the representation.

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 on 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. Patent Owner may reserve time for a brief sur-rebuttal as set forth in the Board's Revised Trial Practice Guide. No other arguments will be heard.

The hearing will commence at 10:00 AM Mountain Time on September 13, 2019, on the 14th floor of the Byron G. Rogers Federal Building, 1961 Stout Street, Denver, Colorado. The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing.

¹ Citations are to IPR2018-01257. Similar papers have been filed in both proceedings.

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Attendance

At least one judge may participate in the hearing via videoconference or telephonic conference from a remote location; counsel for the parties, however, must appear in person. Because the petitioner parties other than Google LLC have agreed to take an understudy role in the case, only counsel for Google LLC is authorized to present arguments on behalf of the petitioner parties.

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 as long as that counsel is present in person. 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.

A party may request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. The available locations include the USPTO headquarters in Alexandria, Virginia; the Texas Regional Office in Dallas, Texas; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the Silicon Valley Office in San Jose, CA. To request remote video viewing, a party must send an email message to Trials@uspto.gov ten business days prior to the hearing, indicating the requested location and the number planning to view the hearing from the remote location. The Board will notify the parties if the request for video viewing is granted. Note that it may not be possible to grant the request due to the availability of resources.

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

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concerns about disclosing confidential information, they should contact the Board at least ten days in advance of the hearing to discuss the matter.

Exhibits

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing date. The parties also shall provide the demonstrative exhibits to the Board at least two business days prior to the hearing by emailing them to Trials@uspto.gov. The parties shall not file any demonstrative exhibits in this case without prior authorization.

Demonstrative exhibits should cite to evidence in the record. Demonstrative exhibits are not evidence. Rather, they are merely visual aids to oral argument and should be clearly marked as such. For example, each slide may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Demonstrative exhibits may not be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Acceleron, 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 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.

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 reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen

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number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript.

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

The parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits. Any party with unresolved objections 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 schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits not timely presented may be considered waived.

Special Requests

Any special requests for audio-visual equipment should be directed to Trials@uspto.gov. A party may also indicate any special requests related to appearing at an in-person oral hearing, such as a request to accommodate physical needs that limit mobility or visual or hearing impairments, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication not less than five days before the hearing. If the request is not received timely, the equipment may not be available on the day of the hearing.

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