

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
HTC CORPORATION, HTC AMERICA, INC.,
AND ZTE (USA) INC.,
Petitioner,
v.
INVT SPE LLC,
Patent Owner.

Case IPR2018-01473
Patent 6,611,676 B2
and
Case IPR2018-01475
Patent 7,760,815 B2¹

Before THU A. DANG, KEVIN F. TURNER, and
BARBARA A. BENOIT, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ This Order addresses issues that are the same in each identified case. We exercise our discretion to issue one Order to be filed in each case. The parties, however, are not authorized to use this style heading in subsequent papers.

IPR2018-01473 and IPR2018-01475
Patents 6,611,676 B2 and 7,760,815 B2

On March 29, 2019, we entered a Decision to Institute a trial in each of IPR2018-01473 (Paper 10) and IPR2018-01475 (Paper 9). A Scheduling Order issued in these cases set the date for oral argument, if requested by either party, as January 8, 2020. IPR2018-01473 (Paper 11); IPR2018-01475 (Paper 10). Pursuant to 37 C.F.R. § 42.70, Apple Inc., HTC Corporation, HTC America, Inc., and ZTE (USA) Inc. (collectively, “Petitioner”) and INVT SPE LLC (“Patent Owner”) each requested oral argument in each of these proceedings. IPR2018-01473 (Papers 22, 23); IPR2018-01475 (Papers 21, 22). Petitioner requests forty-five minutes of argument time and that the hearing take place in Alexandria, Virginia. IPR2018-01473 (Paper 22); IPR2018-01475 (Paper 21). Patent Owner requests sixty minutes of argument time. IPR2018-01473 (Paper 23); IPR2018-01475 (Paper 22).

These requests are GRANTED according to the terms set forth in this Order.

Oral argument for each of IPR2018-01473 and IPR2018-01475 will be held on **Wednesday, January 8, 2020**, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Oral argument for IPR2018-01473 will commence at **1:00 PM ET** and, after a short break, oral argument for IPR2018-01475 will commence. Each party will be allocated **sixty (60) minutes** of total argument time to present its arguments for each of IPR2018-01473 and IPR2018-01475.

Petitioner bears the ultimate burden of proof that the claims at issue are unpatentable. Therefore, for each of IPR2018-01473 and IPR2018-01475, Petitioner will proceed first to present its case with regard to the challenged claims and grounds on which we instituted trial in this

IPR2018-01473 and IPR2018-01475
Patents 6,611,676 B2 and 7,760,815 B2

proceeding, as well as any motions for which it bears the ultimate burden of proof. Petitioner may reserve some of its allotted argument time for rebuttal to respond to Patent Owner's arguments.

After Petitioner's initial presentation, Patent Owner will argue its opposition to Petitioner's case and present any issues for which it bears the ultimate burden, including argument on any of Patent Owner's pending motions. Patent Owner may reserve some of its allotted argument time for sur-rebuttal.

Petitioner may use any reserved time to respond to Patent Owner's presentation. Patent Owner may use any reserved time 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 side made in its immediately preceding presentation. The parties also are reminded that, during the hearing, the parties "may only present arguments relied upon in the papers previously submitted." Office Trial Practice Guide, August 2018 Update,² p. 23. New arguments not previously raised will be disregarded.

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.

No live testimony from any witness will be permitted at the hearing without prior authorization from the Board. A party requesting authorization to present live testimony at the hearing shall initiate a joint telephone

² available at www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf.

IPR2018-01473 and IPR2018-01475
Patents 6,611,676 B2 and 7,760,815 B2

conference with the other party and the panel as soon as possible, and in any event no later than **ten (10) business days** prior to the hearing to discuss the matter. The parties are directed to the Board's decision in *K-40 Electronics, LLC v. Escort, Inc.*, IPR2013-00203, Paper 34 (PTAB May 21, 2014) (precedential) for guidance as to the circumstances in which live testimony may be authorized.

Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served on opposing counsel at least **seven (7) business days** before the hearing. The parties shall provide a courtesy copy of any demonstrative exhibits to the Board at least **three (3) business days** prior to the hearing by emailing them to Trials@uspto.gov.

The parties are reminded that demonstratives are visual aids to oral argument, not evidence, and are intended only to assist the parties in presenting their oral argument to the panel. Demonstratives 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"). Each demonstrative must include a citation to the briefs and/or evidence in the record indicating the source(s) of its content.

The parties shall meet and confer to discuss any objections to the demonstratives. If any issues regarding demonstratives remain unresolved after the parties meet and confer, the parties shall jointly submit (by email to Trials@uspto.gov) a one-page list of objections to the demonstratives at least **three (3) business days** before the hearing, if no pre-hearing conference was requested. Any objection to the demonstrative exhibits that

IPR2018-01473 and IPR2018-01475
Patents 6,611,676 B2 and 7,760,815 B2

is not presented timely will be considered waived. The objections should identify with particularity which demonstratives are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if deemed necessary.

Otherwise, the Board will reserve ruling on the objections until after the oral argument. 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, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects lead counsel for each party to be present at oral hearing, although any backup counsel may make the actual presentation, in whole or in part. If lead counsel for either party will not be in attendance at oral hearing, the Board should be notified via a joint telephone conference call no later than **seven (7) business days** prior to the oral hearing to discuss the matter.

At least one judge will be participating remotely via a videoconferencing device and will not be able to view the projection screen in the hearing room. 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 avoid confusion, and to ensure the clarity and accuracy of the reporter's transcript.

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 Texas Regional Office in Dallas, Texas; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the

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