

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC., HTC CORPORATION,  
HTC AMERICA, INC. and ZTE (USA) INC.,  
Petitioners,

v.

INVT SPE LLC,  
Patent Owner.

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Case IPR2018-01476  
Patent 7,764,711 B2

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Before THU A. DANG, BARBARA A. BENOIT, and J. JOHN LEE,  
*Administrative Patent Judges.*

LEE, *Administrative Patent Judge.*

ORDER  
Trial Hearing  
37 C.F.R. § 42.70

Patent Owner requested oral argument pursuant to 37 C.F.R. § 42.70. Paper 22. Patent Owner proposes that it be allocated one hour of argument time to present its arguments. *Id.* at 1. The request is GRANTED according to the terms set forth in this Order. Oral argument for the proceeding will commence at **1:00 PM Eastern Time on Tuesday, January 14, 2020**, on the ninth floor of USPTO Headquarters, Madison Building East, 600 Dulany Street, Alexandria, Virginia 22314. We allocate each side **forty-five (45) minutes** of total argument time to present its arguments.

*Pre-Hearing Conference*

Either side may request a pre-hearing conference. Office Patent Trial Practice Guide, August 2018 Update, p. 19, *available at* [www.uspto.gov/sites/default/files/documents/2018\\_Revised\\_Trial\\_Practice\\_Guide.pdf](http://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf). Requests for a pre-hearing conference must be made no later than **January 3, 2020**. Prior to making a request, the parties should meet and confer and send a joint request to the Board with an agreed upon set of limited issues for discussion in the pre-hearing conference. Issues appropriate for discussion in a pre-hearing conference may include objections to demonstratives, pending motions (particularly motions to exclude), and any other issue that may affect the ability of a party to present its arguments at the hearing. To request a pre-hearing conference, a joint email request should be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov), including several dates and times of availability for both parties. If the parties are unable to agree on the issues to be addressed at the pre-hearing conference, the joint request shall specify which issues are disputed and provide a brief statement (not to exceed one sentence) of the opposing party's objection to each issue.

The panel may, at its discretion, indicate certain issues during the pre-hearing conference that it wishes parties to emphasize at the oral hearing. Although the parties and the panel may discuss issues for the oral hearing at the pre-hearing conference, the issues discussed at the pre-hearing conference do not limit the scope of the oral hearing. Instead, the parties remain free to address at the oral hearing any issue properly raised during the trial, and the panel may ask questions on issues other than those identified at the pre-hearing conference.

The prehearing conference is not required and, absent a request, no call will be held.

#### *Order of Argument and Attending/Viewing Hearing*

Petitioners bear the ultimate burden of proof that the challenged claims are unpatentable. Therefore, at the hearing, Petitioners will proceed first to present their arguments with regard to the challenged claims and grounds on which we instituted trial in this proceeding, as well as any motions for which they bear the ultimate burden of proof. Petitioners may reserve some of their allotted argument time for rebuttal to respond to Patent Owner's arguments.

After Petitioners' initial presentation, Patent Owner will argue its opposition to Petitioners' 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. Thereafter, Petitioners may use any reserved time to respond to Patent Owner's presentation. Finally, Patent Owner may use any reserved time to respond to Petitioners' 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, p. 23. New arguments not previously raised will be disregarded.

The Board expects lead counsel for each party to be present in person at the oral hearing. Lead or backup counsel, however, may present the party’s argument. If either party anticipates that its lead counsel will not be attending the hearing, that party should initiate a joint telephone conference with the other party and the panel no later than **seven (7) business days** prior to the hearing to discuss the matter.

The hearing will be open to the public for in-person attendance, and in-person attendance will be accommodated on a first-come, first-served basis. Please be advised that available seating is limited. 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 Rocky Mountain Regional Office in Denver, Colorado; 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](mailto:Trials@uspto.gov) at least **ten (10) 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 remote video viewing is granted. Note that it may not be possible to grant the request due to the availability of resources.

*Demonstratives*

Under 37 C.F.R. § 42.70(b), each side’s demonstratives must be served on opposing counsel at least **seven (7) business days** before the hearing. Each side also shall file a courtesy copy of its demonstratives with the Board at least **three (3) business days** prior to the hearing as a separate paper (not as an exhibit). Each side shall provide a hard copy of its demonstratives to the court reporter at the hearing. 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. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014), for guidance regarding the appropriate content of demonstratives. Demonstratives may not be used to advance arguments or introduce 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”). 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](mailto: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. For each objection, the list must identify with

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