

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., HTC CORPORATION, AND HTC AMERICA, INC.,
Petitioner,

v.

INVT SPE LLC,
Patent Owner.

IPR2018-01555¹ and IPR2018-01581²
Patent 7,848,439 B2³

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

BENOIT, *Administrative Patent Judge.*

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ Apple Inc., who filed a petition in IPR2018-00958, has been joined as a petitioner in IPR2018-01555. Paper 15.

² Apple Inc., who filed a petition in IPR2018-00959, has been joined as a petitioner in IPR2018-01581. Paper 13.

³ 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.

IPR2018-01555 and IPR2018-01581
Patent 7,848,439 B2

A consolidated oral argument for IPR2018-01555 and IPR2018-01581 was scheduled for January 8, 2020 if requested by at least one of the parties. IPR2018-01555 Paper 12 (Revised Scheduling Order); IPR2018-01581 Paper 8 (Scheduling Order). Apple Inc., HTC Corporation, and HTC America, Inc. (collectively, “Petitioner”) and INVT SPE LLC, Inc. (“Patent Owner”) each requested oral argument for each of the cases. IPR2018-01555 Papers 27, 28; IPR2018-01581 Papers 25, 26. Petitioner requests seventy-five minutes of argument time and that the hearing take place in Alexandria, Virginia. IPR2018-01555 Paper 27; IPR2018-01581 Paper 25. Patent Owner requests sixty minutes of argument time. IPR2018-01555 Paper 28; IPR2018-01581 Paper 26.

The requests are GRANTED according to the terms set forth in this Order. Our scheduling orders indicated that oral argument, if requested, would be held at USPTO Headquarters, absent request that the oral argument be held elsewhere. *See, e.g.*, IPR2018-01581, Paper 8. No such request has been received.

Oral argument for the proceedings will commence at **10:00 AM Eastern Time on Wednesday, January 8, 2020**, on the ninth floor of USPTO Headquarters, Madison Building East, 600 Dulany Street, Alexandria, Virginia 22314. We allocate each side **sixty (60) minutes** of total argument time to present its arguments for both IPR2018-01555 and IPR2018-01581.

Pre-Hearing Conference

Either side may request a pre-hearing conference. Office Patent Trial Practice Guide, August 2018 Update,⁴ p. 19. Requests for a pre-hearing conference must be made no later than **December 18, 2019**, as indicated in the Scheduling Order. *See, e.g.*, IPR2018-01581 Paper 25, 9. 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 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, 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

⁴ available at www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf.

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 timely request, no call will be held.

Order of Argument and Attending/Viewing Hearing

Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. Therefore, at the hearing, Petitioner will proceed first to present arguments with regard to the challenged claims and grounds on which we instituted trial in these proceedings, 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. Thereafter, Petitioner may use any reserved time to respond to Patent Owner's presentation. Finally, 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, 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, California. To request remote video viewing, a party must send an email message to 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

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