

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

DIRECTSTREAM, LLC,
Patent Owner.

IPR2018-01594 (Patent 6,434,687 B2)
IPR2018-01599 (Patent 6,076,152)
IPR2018-01600 (Patent 6,247,110 B1)
IPR2018-01601 (Patent 7,225,324 B2)¹
IPR2018-01604 (Patent 7,421,524 B2)
IPR2018-01605 (Patent 7,620,800 B2)²

Before KALYAN K. DESHPANDE, JUSTIN T. ARBES, and
CHRISTA P. ZADO, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

ORDER
Trial Hearing
35 U.S.C. § 316(a)(10) and 37 C.F.R. § 42.70

¹ Cases IPR2018-01602 and IPR2018-01603 have been consolidated with Case IPR2018-01601.

² Cases IPR2018-01606 and IPR2018-01607 have been consolidated with Case IPR2018-01605. This Order addresses issues pertaining to both cases. Therefore, we exercise our discretion to issue a single Order to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

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Petitioner and Patent Owner requested a hearing in each of the instant proceedings pursuant to 37 C.F.R. § 42.70(a).³ The requests are *granted*.

The hearings will take place at the following dates and times:

| Case(s) | Date/Time |
|---|--|
| IPR2018-01599 and IPR2018-01600 (consolidated hearing) | 12:00 PM Eastern Time, February 3, 2020 |
| IPR2018-01604 | Immediately following the hearing in IPR2018-01599 and IPR2018-01600, February 3, 2020 |
| IPR2018-01601 and IPR2018-01605 (consolidated hearing) | 12:00 PM Eastern Time, February 4, 2020 |
| IPR2018-01594 | Immediately following the hearing in IPR2018-01601 and IPR2018-01605, February 4, 2020 |

Consolidated hearings will be conducted for Cases IPR2018-01599 and IPR2018-01600, and for Cases IPR2018-01601 and IPR2018-01605, as set forth above. For each consolidated hearing, each party will have ninety (90) minutes of total time to present arguments. For each of the other two

³ See IPR2018-01594, Papers 52, 54; IPR2018-01599, Papers 52, 54; IPR2018-01600, Papers 52, 54; IPR2018-01601, Papers 52, 54; IPR2018-01604, Papers 53, 55; IPR2018-01605, Papers 52, 54. We refer herein to Petitioner's "corrected" request for oral argument in each proceeding.

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hearings, each party will have sixty (60) minutes of total time to present arguments.

For each hearing, Petitioner will proceed first to present its case as to the challenged claims, and may argue any motion to exclude it filed in the respective proceeding(s) and may reserve rebuttal time (no more than thirty (30) minutes). Patent Owner then will respond to Petitioner's presentation, and may argue any motion to exclude it filed in the respective proceeding(s) and may reserve rebuttal time (no more than fifteen (15) minutes). After that, Petitioner may use the rest of its time to respond to Patent Owner's presentation. Finally, Patent Owner may present a brief sur-rebuttal responding to Petitioner's rebuttal arguments only, if requested.⁴

The hearings will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria,

⁴ Patent Owner requests that the parties each be permitted a ten (10) minute "opening statement" and that the hearings follow a procedure in which each party argues and "pass[es] the argument to [the opposing party] when it chooses . . . in turn until each side has exhausted its total presentation time." *See, e.g.*, IPR2018-01594, Paper 52, 6. We see no need for such a procedure, as the arguments presented at the hearings will be based on the papers and exhibits of record, of which the Board is aware. The order of presentation is the standard order set forth in the Board's Trial Practice Guide Update (August 2018), 20, *available at* https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf ("Trial Practice Guide Update"). Consistent with that procedure, both parties will have the opportunity to argue twice during each hearing and respond to arguments made by the opposing party.

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Virginia. In-person attendance will be accommodated on a first come, first served basis. The Board will provide a court reporter for each hearing, and the reporter's transcripts will constitute the official record of the hearings.

Notwithstanding 37 C.F.R. § 42.70(b), the parties may agree on a date for service of demonstrative exhibits. The parties shall confer with each other regarding any objections to demonstrative exhibits and file demonstrative exhibits with the Board at least two business days prior to the respective hearing. For any issue that cannot be resolved after conferring with the opposing party, the parties may file jointly a one-page list of objections at least two business days prior to the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one sentence) of the reason for each objection. No argument or further explanation is permitted. We will consider the objections and schedule a conference call, if necessary. Otherwise, we will reserve ruling on the objections until the hearing or after the hearing. Any objection to demonstrative exhibits that is not presented timely will be considered waived. Each party also shall provide a hard copy of its demonstrative exhibits to the court reporter at the hearing.

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014), regarding the appropriate content of demonstrative exhibits. Demonstrative exhibits are only an aid to oral argument and are not evidence, and should be clearly marked as such. For example, each slide

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may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. *See* Trial Practice Guide Update, 21–22.

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 hearings to ensure the clarity and accuracy of the reporter’s transcripts. The parties also should note that one member of the panel will be attending the hearings electronically from a remote location and that if a demonstrative exhibit is not filed or otherwise made fully available or visible to the judge presiding over the hearings remotely, that demonstrative exhibit will not be considered. The judge presiding remotely will not be able to view the screen in the hearing room.

The Board expects lead counsel for each party to be present in person at the hearings. However, any counsel of record may present the party’s argument, in whole or in part, as long as that counsel is present in person. If either party expects that its lead counsel will not be attending a hearing, the parties should initiate a joint telephone conference with the Board no later than two business days prior to the hearing to discuss the matter.

A party may request remote video attendance for one or more of its other attendees to view the hearings from any U.S. Patent and Trademark Office 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* ten business days

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