

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CANON INC., CANON U.S.A., INC., and
AXIS COMMUNICATIONS AB,
Petitioner,

v.

AVIGILON FORTRESS CORPORATION,
Patent Owner.

Case IPR2019-00311
Case IPR2019-00314¹
Patent 7,923,923 B2 & C1

Before GEORGIANNA W. BRADEN, KIMBERLY McGRAW, and
JESSICA C. KAISER, *Administrative Patent Judges*.

McGRAW, *Administrative Patent Judge*.

ORDER
Granting the Parties' Requests for Oral Hearing
37 C.F.R. § 42.70

¹ This Order applies to both listed cases. The parties may not use this style heading unless authorized.

INTRODUCTION

The parties filed a joint request for an oral hearing in each of the above captioned cases. Paper 39 (IPR2019-00311); Paper 39 (IPR2019-00314).² The parties request a total seventy-five (75) minutes of argument time for each side. Paper 39, 1. The requests for oral hearing are granted. The oral hearing will commence at **1:00 PM on Wednesday, April 8, 2020**, at the **USPTO Headquarters on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia**.

There is a substantial overlap of issues between the two cases. Therefore, although the cases are not consolidated, the cases will be argued together and a single transcript created.

Each party will have the requested seventy-five (75) minutes of total argument time for the two cases. The parties are responsible for allocating their argument time between the two cases, including any argument on pending motions or procedural matters.

Petitioner bears the burden of proof to show that the claims at issue are unpatentable. Therefore, Petitioner will proceed first with respect to the challenged claims and instituted grounds. Patent Owner will then have the opportunity to respond to Petitioner's arguments. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Petitioner's rebuttal may not be more than half the total allotted time. Thereafter, Patent Owner may use any reserved sur-rebuttal time to present a brief sur-rebuttal.

The parties may only rely upon evidence that has been previously submitted in the above proceedings and may only present arguments that

² Citations are to IPR2019-00311 unless otherwise indicated.

IPR2019-00311; IPR2019-00314
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have been previously made in the submitted papers. No new evidence or arguments may be presented at the hearing. The parties have not requested to present live testimony during the hearing; thus, live testimony will not be permitted.

Official Record

The Board will provide a court reporter. A single transcript shall be created for both cases, and the reporter's transcript shall constitute the official record of the oral argument.

Pre-Hearing Conference Call

Per the Consolidated Trial Practice Guide, either party may request a pre-hearing conference call. See Patent Trial and Appeal Board Consolidated Trial Practice Guide, 82 (Nov. 2019).³ Requests for a pre-hearing conference must be made by **March 30, 2020**. See Paper 19, 9 (Scheduling Order, Due Date 6). To request such a conference, an email should be sent to Trials@uspto.gov. The email shall include several dates and times of availability for both parties that are generally no later than **three (3) business days** prior to the oral argument and shall include a list of issues to be discussed during the conference. The parties may refer to the Consolidated Trial Practice Guide for more information about pre-hearing conference calls.

³ The Consolidated Trial Practice Guide is available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

Demonstrative Exhibits

At least **five (5) business days** prior to the hearing, each party shall serve on the other party any demonstrative exhibits it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). The parties may refer to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041, slip op. at 2–5 (PTAB Jan. 27, 2014) (Paper 65) regarding the appropriate content of demonstrative exhibits.

The parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits. If any objections to demonstrative exhibits cannot be resolved, the objecting party may file a statement of objections with the Board at least **three (3) business days** before the hearing. The statement of objections should identify with particularity the portion of each demonstrative exhibit subject to objection and include a brief statement (no more than a few sentences) of the reason for such objection.

The Board will consider the statement of objections and may schedule a conference call to discuss the objections or may discuss the objections during the pre-hearing conference call, if requested. Otherwise, the Board will reserve ruling on the objections. Any objection that is not timely presented will be deemed waived.

Notwithstanding 37 C.F.R. § 42.70(b), each party shall file its demonstrative exhibits with the Board as a separate paper no later than **three (3) business days** before the hearing.

Each party shall provide a hard copy of its demonstratives to the court reporter at the hearing. The parties are reminded that the demonstrative exhibits presented in this case are not evidence and may not introduce new evidence or arguments. Demonstrative exhibits should be clearly marked as

such. For example, each slide may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Any demonstrative exhibit not served on a party or filed at the Board may not be used during the hearing. Slides should be numbered individually.

At least one judge on the panel will be hearing the case from a remote location and may not be able to view the projection screen in the hearing room. Thus, during the hearing, counsel must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced to ensure clarity and accuracy of the reporter’s transcript and for the benefit of the judge(s) presiding over the hearing remotely. Because of limitations of the audio transmission systems in our hearing rooms, the presenter may speak only when standing at the hearing room lectern.

Public Access to the Hearing Room

The hearing will be open to the public, and seating will be accommodated on a first-come, first-served basis. The parties are directed to refrain from disclosing any confidential information during the hearing or including any confidential information in a demonstrative exhibit. If the parties have any concern about disclosing confidential information, they must contact the Board at least **ten (10) business days** before the hearing to discuss the matter.

To facilitate planning, each party must send an email message to PTABHearings@uspto.gov **five (5) business days** prior to the hearing if the number planning to attend the hearing in-person for its side (attorneys and others) exceeds five people.

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