

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC., INSTAGRAM, LLC, and WHATSAPP INC.,
Petitioner,

v.

BLACKBERRY LIMITED,
Patent Owner.

Case IPR2019-00516
Case IPR2019-00528
Patent 8,279,173 B2

Before, SALLY C. MEDLEY, MIRIAM L. QUINN, and
AARON W. MOORE, *Administrative Patent Judges*.

QUINN, *Administrative Patent Judge*.

ORDER
Setting Oral Hearing by Video
37 C.F.R. § 42.70(a)

In the above-identified proceedings, we instituted *inter partes* review and issued a Scheduling Order setting the oral hearing on May 5, 2020, if oral hearing is requested by either party and granted by the Board. Both parties requested an oral hearing in this case, with Petitioner requesting 30 minutes of total time and the USPTO Regional Office located in Denver as the location. Paper 31. Patent Owner acknowledges that the Board is not conducting oral arguments in person, and has not identified any particular duration for its presentation. Paper 32. The request for oral argument is *granted*.

1. Remote Hearing Instructions

Oral arguments will commence at 11 AM ET (10 AM CT, 9 AM MT, and 8 AM PT) on May 5, 2020, **by video**. The parties are directed to contact the Board at least 10 days in advance of the hearing if there are any concerns about disclosing confidential information. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

If at any time during the proceeding, you encounter technical or other difficulties that fundamentally undermine your ability to adequately represent your client, please let the panel know immediately, and adjustments will be made.¹

To facilitate planning, each party must contact PTAB Hearings at (571) 272-9797 **five business days** prior to the oral hearing date to receive

¹ For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

video set-up information. As a reminder, all arrangements and the expenses involved with appearing by video, such as the selection of the facility to be used from which a party will attend by video, must be borne by that party. If a video connection cannot be established, the parties will be provided with dial-in connection information, and the oral hearing will be conducted telephonically.

If one or both parties would prefer to participate in the oral hearing telephonically, they should notify PTAB Hearings at the above telephone number five business days prior to the hearing to receive dial-in connection information.

2. Order and Manner of Presentation

Each party will have thirty (30) minutes of total time to present arguments for this proceeding. Because Petitioner bears the ultimate burden of proof that the challenged and proposed substitute claims are unpatentable, Petitioner will proceed first to present its case as to the challenged claims and instituted grounds of unpatentability in this proceeding, and may reserve a small portion of its time for rebuttal. Thereafter, Patent Owner will respond to Petitioner's case. After that, Petitioner may use the rest of its time for its rebuttal, responding to Patent Owner's specific arguments presented at the oral hearing. If Patent Owner has reserved time for rebuttal and up to the time remaining, Patent Owner may present sur-rebuttal argument. No live testimony from any witness will be taken at the oral hearing.

Please unmute yourself only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. During

the oral hearing, the parties are advised to identify clearly and specifically each demonstrative referenced (e.g., by slide or screen number) to ensure the clarity and accuracy of the court reporter's transcript. In addition, the parties are advised to identify themselves each time they speak. Furthermore, the remote nature of the oral hearing may also result in an audio lag, and so the parties are advised to observe a pause prior to speaking, so as to avoid speaking over others. Opposing counsel may not interrupt counsel for the speaking party and any objections to the presentation of opposing counsel must be made during the counsel's speaking time. The presiding judge will keep time and announce it as needed to maintain order.

3. Filing of Demonstratives

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least five business days prior to the hearing. The parties shall confer with each other regarding any objections to demonstrative exhibits, and file demonstrative exhibits with the Board, as a separate exhibit in accordance with 37 C.F.R. § 42.63, at least three business days prior to the hearing.

4. Objections to Demonstratives

Demonstrative exhibits are not evidence, but merely a visual aid at the oral hearing. The Board expects the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. 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 three 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 short 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.

5. Lead Counsel Present

The Board generally expects lead counsel for each party to be present by video at the oral hearing. Any counsel of record may present the party's argument as long as that counsel is present by video.

6. Special Requests

Any special requests for audio-visual equipment should be directed to PTABHearings@uspto.gov. A party may also indicate any special requests related to appearing at a video oral hearing, such as a request to accommodate visual or hearing impairments, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication not less than five (5) days before the hearing.

7. Public Attendance

Members of the public may request to listen in on this oral hearing. If resources are available, the Board generally expects to grant such requests. If either party objects to the Board granting such requests, for example, because confidential information may be discussed, the party must notify the Board by contacting PTABHearings@uspto.gov at least five business days prior to the oral hearing date.

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