

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RTI SURGICAL, INC.,
Petitioner,

v.

LIFENET HEALTH,
Patent Owner.

IPR2019-00569 (Patent 6,458,158 B1)
IPR2019-00570 (Patent 8,182,532 B2)¹

Before GEORGE R. HOSKINS, TIMOTHY J. GOODSON, and
CHRISTOPHER C. KENNEDY, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ This order is being filed in each proceeding listed in the caption. The parties may use this style caption only if the paper includes a statement certifying that the identical paper is being filed in each proceeding listed in the caption.

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Petitioner and Patent Owner request an oral hearing pursuant to 37 C.F.R. § 42.70(a) in each of the proceedings captioned above. *See* IPR2019-00569, Papers 58, 59.² The parties' requests are *granted*. These cases are not consolidated, but given the overlap in subject matter and consistent with the parties' requests, a single hearing will be held and a single transcript will be provided for both cases.

Oral arguments will commence at 1:00 p.m. ET on June 2, 2020, by video. 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.³

To facilitate planning, each party must contact PTAB Hearings at (571) 272-9797 on May 26, 2020 to receive video set-up information. 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 on May 26, 2020 to receive dial-in connection information.

² For simplicity, we cite to the record in IPR2019-00569, unless otherwise noted. Similar or identical papers were filed in the other proceeding.

³ For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

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Petitioner requests that each side have 60 minutes of argument time to address both proceedings, and Patent Owner requests that each side have 90 minutes. *See* Paper 59, 2; Paper 58, 2–3. Based on our review of the records in these cases, Patent Owner’s proposal seems reasonable.

Therefore, Petitioner will be allotted 90 minutes of total argument time for both cases, and Patent Owner likewise will be allotted 90 minutes of total argument time for both cases. Petitioner will begin by presenting its argument regarding the challenged claims and grounds in the proceedings, and may reserve argument time for use in rebuttal. Thereafter, Patent Owner will argue its opposition to Petitioner’s challenges in both proceedings, and Patent Owner may reserve argument time for use in sur-rebuttal.⁴ To the extent Petitioner reserves rebuttal time, Petitioner then may make use of that rebuttal time. Finally, if Patent Owner reserves time for a brief sur-rebuttal, Patent Owner may use that time. The parties are reminded that arguments made during rebuttal and sur-rebuttal periods must be responsive to arguments the opposing party made in its immediately preceding presentation. The parties are also reminded that during the hearing, the parties “may only present arguments relied upon in the papers previously submitted.” Trial Practice Guide August 2018 Update, p. 23.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing (i.e., by May 22, 2020). The parties also shall file a copy of the demonstratives as an exhibit by May 28, 2020. The parties are directed to *St. Jude Medical, Cardiology Division, Inc.*

⁴ *See* Trial Practice Guide August 2018 Update, p. 20, *available at* www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf (providing that the “Board may also permit patent owners the opportunity to present a brief sur-rebuttal if requested”)

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v. The Board of Regents of the University of Michigan, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties shall meet and confer to discuss any objections to demonstrative exhibits. If any issues regarding demonstratives remain unresolved after the parties meet and confer, the parties shall file jointly a one-page list of objections to the demonstrative exhibits by May 28, 2020. For each objection, the list must identify with particularity the demonstratives subject to the objection and include a short, one-sentence statement explaining the objection. The panel will consider the objections and schedule a conference call if necessary. Otherwise, the panel will reserve ruling on the objections. Any objection to demonstrative exhibits not presented timely will be considered waived.

Either party may request a pre-hearing conference call.⁵ The prehearing call is not required, and absent a request, no call will be held. Prior to making a request, the parties should confer and send a joint request to the Board with an agreed upon set of limited issues for discussion. To request a conference, an email should be sent to Trials@uspto.gov by May 19, 2020, including several dates and times of availability for both parties.

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.

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

⁵ See Trial Practice Guide August 2018 Update, p. 19–20

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may accommodate the special request. Any special requests must be presented in a separate communication by May 26, 2020.

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.

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 by May 26, 2020.

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