

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN MULTI-CINEMA, INC.; AMC ENTERTAINMENT HOLDINGS, INC.; BOSTON MARKET CORPORATION; MOBO SYSTEMS, INC.; MCDONALD'S CORPORATION; MCDONALD'S USA; PANDA RESTAURANT GROUP, INC.; PANDA EXPRESS INC.; PAPA JOHN'S INTERNATIONAL, INC.; STAR PAPA LP; and PAPA JOHN'S USA, INC.

Petitioner,

v.

FALL LINE PATENTS, LLC
Patent Owner.

Case IPR2019-00610
Patent 9,454,748 B2

Before MICHELLE N. WORMMEESTER, SHEILA F. McSHANE, and JOHN R. KENNY, *Administrative Patent Judges*.

KENNY, *Administrative Patent Judge*.

DECISION
Granting Request for Oral Hearing
37 C.F.R. § 42.70

I. HEARING AND ATTENDANCE

Petitioner requests an oral hearing pursuant to 37 C.F.R. § 42.70 in the above proceeding. Paper 21. The request is *granted* subject to the conditions set forth in this Order.

Oral argument(s) will commence at **1:00 PM Eastern Time on April 28, 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 (5) business days prior to the oral hearing date to receive 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.

Any special requests for audio-visual equipment should be directed to PTABHearings@uspto.gov. A party may also indicate any special requests

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

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.

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 (5) business days prior to the hearing to receive dial-in connection information.

Petitioner requests that each side be given sixty minutes in which to present. Patent Owner did not submit a request for oral hearing. Each side will be given a total of sixty (60) minutes in which to present.

Petitioner will present its case first. Patent Owner will then present its case. Next, Petitioner may use any time it has reserved for rebuttal, not to exceed half the time allotted to it for argument, to respond to issues raised during Patent Owner's argument. Lastly, Patent Owner may use any time it has reserved for sur-rebuttal, not to exceed thirty minutes, to address issues raised during Petitioner's rebuttal.

The Board expects lead counsel for each party to be present by video at the oral hearing. However, any counsel of record may present a party's argument as long as that counsel is present by video. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two (2) business days prior to the oral hearing to discuss the matter.

II. DEMONSTRATIVE EXHIBITS

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven (7) business days before the hearing. The parties also shall provide the demonstrative exhibits to the Board at least two (2) business days prior to the hearing by emailing them to PTABHearings@uspto.gov. Despite the requirement in § 42.70(b) for parties to file demonstratives, the parties shall *not* file any demonstrative exhibits without prior authorization from the Board.

Demonstrative exhibits used at the oral hearing are aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide of a demonstrative exhibit may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the “Board was obligated to dismiss [the petitioner’s] untimely argument . . . raised for the first time during oral argument”). Each demonstrative must include a citation to the page number(s) of the paper(s) where the argument or evidence that is the subject of the demonstrative was advanced by a party.

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014), regarding the appropriate content of demonstrative exhibits. The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved the parties may file any objections to demonstratives with the Board at least two (2) business days before the

hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

III. GUIDANCE AND REQUESTS

The panel will have access to all papers filed with the Board, as well as demonstratives submitted via email according to the above instructions. During the oral hearing, the parties must 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. The Board requests identification for *all* exhibits discussed during oral argument in the interest of providing a clear record. In addition, the parties are requested to identify themselves each time they speak. Further, the remote nature of the oral hearing may also result in an audio lag. Accordingly, counsel should observe a pause prior to speaking, so as to avoid speaking over others. Please unmute yourself only when speaking.

Per the Office Patent Trial Practice Guide, either party may request a pre-hearing conference. *See* Office Patent Trial Practice Guide, 84 Fed. Reg. 64,280 (Nov. 21, 2019), which is available at the following link: <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=>. Requests for a pre-hearing conference must be made by April 17, 2020. To request such a conference, an email should be sent to Trials@uspto.gov

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