

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., SAMSUNG ELECTRONICS CO., LTD., and
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

FIRSTFACE CO., LTD.,
Patent Owner.

Cases¹

IPR2019-00612 (Patent 8,831,557 B2)
IPR2019-00613 (Patent 9,633,373 B2)²
IPR2019-00614 (Patent 9,779,419 B2)³

Before JUSTIN T. ARBES, MELISSA A. HAAPALA, and
RUSSELL E. CASS, *Administrative Patent Judges*.

HAAPALA, *Administrative Patent Judge*.

TRIAL HEARING ORDER
37 C.F.R. § 42.70

¹ Apple Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. are the petitioner in Case IPR2019-00612. Apple Inc. is the petitioner in Cases IPR2019-00613 and IPR2019-00614. We refer herein to the petitioner in each respective proceeding as “Petitioner.” This Order applies to each of the listed cases. The parties are not authorized to use a multiple case caption.

² Case IPR2019-01011 has been consolidated with this proceeding.

³ Case IPR2019-01012 has been consolidated with this proceeding.

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Petitioner and Patent Owner each filed requests for oral hearing in the above-captioned proceedings. Papers 18, 19.⁴ The requests for oral hearing for these proceedings are *granted*.

Oral arguments for IPR2019-00612 will commence at 10 AM Eastern Time on May 5, 2020. Following a break, a combined hearing will be held for IPR2019-00613 and IPR2019-00614, which will commence at 1 PM Eastern Time. The hearings will be conducted 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 each hearing, and the reporter's transcript will constitute the official record of the hearing. A combined transcript will be provided for IPR2019-00613 and IPR2019-00614.

If at any time during the hearing counsel encounters technical or other difficulties that fundamentally undermine counsel's ability to adequately represent its client, please let the panel know immediately, and adjustments will be made.

To facilitate planning, each party must contact PTAB Hearings at (571) 272-9797 five 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

⁴ Our citations to Papers will be to those filed in IPR2019-00612. Similar Papers were filed in IPR2019-00613 and IPR2019-00614.

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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.

Each side will have 60 minutes to present its arguments for IPR2019-00612. For the combined hearing of IPR2019-00613 and IPR2019-00614, each side will have 60 minutes, total, to present its arguments for these proceedings. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in these reviews are unpatentable. Accordingly, Petitioner will open each hearing by presenting its case regarding the challenged claims and grounds set forth in the Petition(s). After Petitioner's presentation, Patent Owner will respond to Petitioner's arguments. Petitioner may reserve up to half of its time for rebuttal to respond to Patent Owner's arguments. Thereafter, Patent Owner may use any of its remaining time for sur-rebuttal, to respond to Petitioner's rebuttal arguments.

Per the Office Patent Trial Practice Guide, either party may request a pre-hearing conference. Office Patent Trial Practice Guide, August 2018 Update, 83 Fed. Reg. 39,989 (Aug. 13, 2018) (found at the following link to the USPTO website: https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf). Requests for a pre-hearing conference must be made no later than DUE DATE 6. Prior to such a request, the parties shall meet and confer to discuss potential issues for the pre-hearing conference. To request such a conference, an

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email should be sent to Trials@uspto.gov including a brief list of items the parties would like to discuss with the panel and several dates and times of availability for one or both parties, as appropriate, that are generally no later than three (3) business days prior to the oral hearing. Please refer to the Guide for more information on the pre-hearing conference.

The parties are reminded that, under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been so filed.

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 (2) business days prior to the hearing if no pre-hearing conference is requested or two (2) business days before a pre-hearing conference if one is scheduled. 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.

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The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB January 27, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. 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. 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 hearing to ensure the clarity and accuracy of the reporter’s transcript. 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”). Instead, demonstrative exhibits should cite to evidence in the record.

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 may accommodate the special request. Any special requests must be

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