

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

MPH TECHNOLOGIES OY,  
Patent Owner.

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IPR2019-00819 (Patent 7,620,810 B2)  
IPR2019-00820 (Patent 7,937,581 B2)<sup>1</sup>

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Before KAMRAN JIVANI, JOHN D. HAMANN, and  
STACY B. MARGOLIES, *Administrative Patent Judges*.

JIVANI, *Administrative Patent Judge*.

ORDER  
Oral Hearing  
*37 C.F.R. § 42.70*

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<sup>1</sup> This Order addresses the same issue for the above-identified cases. Therefore, we exercise our discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in any subsequent papers.

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We instituted *inter partes* review in the above-referenced proceeding. Paper 10.<sup>2</sup> The Scheduling Order set June 25, 2020 as the date for oral argument, if requested. Paper 11. Pursuant to 37 C.F.R. § 42.70, each party filed a request for oral argument. Papers 30, 31. The requests are *granted*.

Oral arguments will commence at 9:30 AM ET on June 25, 2020, by video. The parties are directed to contact the Board at least ten (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 be the official hearing record.

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.<sup>3</sup>

To facilitate planning and receive video set-up information, each party must contact PTABHearings@uspto.gov at least five (5) business days prior to the oral hearing date. 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

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<sup>2</sup> All citations are to IPR2019-00819 unless otherwise noted.

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

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

Given the relationship of the patents challenged in the referenced proceedings and the overlap in art asserted in each proceeding, this hearing shall be conducted as a consolidated hearing across both proceedings. Each party will have a total of seventy-five (75) minutes for oral argument time across both proceedings. The parties first should address all issues common to both proceedings, and then clearly identify and address any issues specific to either proceeding. Petitioner will argue first and may present arguments regarding the issues identified in the parties' requests for oral argument (Papers 30, 31). Patent Owner will then have the opportunity to respond to Petitioner's arguments and address the issues identified in the parties' requests for oral argument. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Lastly, Patent Owner may use any time it has reserved for sur-rebuttal to respond to Petitioner's rebuttal arguments. No other arguments will be heard.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served at least (7) seven 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](mailto:PTABHearings@uspto.gov). **The parties shall not file any demonstrative exhibits on the dockets without prior authorization.** The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041, (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding appropriate content of demonstrative exhibits.

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The parties are reminded that demonstrative exhibits are visual aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Demonstrative exhibits may not 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 the briefs and evidence in the record.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if any objections cannot be resolved, the unresolved objections must be filed with the Board at least (2) two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstratives and portions thereof are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if the Board deems necessary. Otherwise, the Board will rule on the objections at the hearing.

Any requests for a pre-hearing conference must be made by June 15, 2020. To request such a conference, an email should be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov) including 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.

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The Board 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 presented in a separate communication not less than five (5) business days before the hearing.

Counsel should unmute 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 thus 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 to 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 (5) business days prior to the oral hearing date.

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