

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SLING TV L.L.C. and  
VUDU, INC.,  
Petitioner,

v.

UNILOC 2017 LLC,  
Patent Owner.

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IPR2019-01367<sup>1</sup>  
Patent 8,407,609 B2

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Before CHARLES J. BOUDREAU, DANIEL J. GALLIGAN, and  
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

DIRBA, *Administrative Patent Judge*.

ORDER  
Trial Hearing  
37 C.F.R. § 42.70

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<sup>1</sup> Vudu, Inc., which filed a petition in IPR2020-00677, has been joined as a petitioner in this proceeding.

Both parties requested oral argument pursuant to 37 C.F.R. § 42.70. Papers 20, 21. Petitioner and Patent Owner both propose thirty minutes per side and request remote participation via video conference, given the ongoing pandemic. Papers 20, 21.

The oral argument requests are *granted* according to the terms set forth in this Order.

Oral argument will commence at **12:30 p.m. Central Time on Thursday, December 3, 2020, by video.**<sup>2</sup> The parties are directed to contact the Board at least **ten business 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, 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, each party must contact PTAB Hearings at [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov) at least **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 from which a party will attend by video, must be borne by that party. If a video connection cannot be established, the parties

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<sup>2</sup> See Paper 12 (modifying scheduled oral hearing date).

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

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 shall notify PTAB Hearings at the above email address at least **five business days** prior to the hearing to receive dial-in connection information.

Each side will have a total of **thirty minutes** to present its argument. New arguments not previously raised in the parties' substantive papers in this proceeding may not be raised during the oral argument. First, Petitioner will present its arguments regarding all issues for which it bears the ultimate burden of proof. Next, Patent Owner may respond to Petitioner's arguments and present any issues for which it bears the ultimate burden (e.g., any pending motions). Finally, Petitioner may reply to the arguments presented by Patent Owner, and then Patent Owner may reply to Petitioner's reply. Each party may reserve no more than fifteen minutes for its rebuttal, and any arguments made during its rebuttal period must be responsive to arguments the opposing party made in its immediately preceding presentation.

### *Demonstratives*

Under 37 C.F.R. § 42.70(b), the party's demonstratives must be served on opposing counsel at least **seven business days** before the hearing. In addition, demonstratives shall be filed with the Board in accordance with 37 C.F.R. § 42.70(b) at least **three business days** before the hearing. Demonstratives are visual aids to oral argument, not evidence, and are intended only to assist the parties in presenting their oral argument to the panel. *See Consolidated Trial Practice Guide 84 (Nov. 2019), available at*

<https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

Demonstratives may not advance arguments or introduce evidence not previously presented in the record, and each demonstrative must include a citation to the briefs and/or evidence in the record indicating the source(s) of its content.

The parties shall meet and confer to discuss any objections to the demonstratives. If any issues regarding demonstratives remain unresolved after the parties meet and confer by telephone, the parties shall jointly submit (by email to [Trials@uspto.gov](mailto:Trials@uspto.gov)) a one-page list of objections to the demonstratives at least **three business days** before the hearing. Any objection not timely presented will be considered waived. For each objection, the one-page 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 may schedule a conference call if deemed necessary. Rulings on the objections may be reserved until the hearing or after the hearing.

#### *Live Testimony*

No live testimony from any witness will be permitted at the hearing without prior authorization from the Board. A party requesting authorization to present live testimony at the hearing shall initiate a joint telephone conference with the other party and the panel as soon as possible, and in any event no later than **seven business days** prior to the hearing to discuss the matter. The parties are directed to the Board's decision in *K-40 Electronics, LLC v. Escort, Inc.*, IPR2013-00203, Paper 34 (PTAB May 21, 2014)

(precedential) for guidance as to the limited circumstances in which live testimony may be authorized.

### *Remote Hearing Instructions*

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](mailto: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 business days** before the hearing.

Please unmute yourself only when speaking. The panel will have access to all papers filed with the Board and the 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. 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

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