

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

IPR2020-00041
Patent 8,407,609 B2

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

Both parties requested oral argument pursuant to 37 C.F.R. § 42.70. Papers 19, 20. Petitioner and Patent Owner both propose thirty minutes per side and intend to participate remotely via video conference, given the ongoing pandemic. Papers 19, 20.

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

Oral argument will commence at **2:00 p.m. Central Time on Thursday, December 3, 2020, by video.** 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.¹

To facilitate planning, each party must contact PTAB Hearings at 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 will be provided with dial-in connection information, and the oral hearing will be conducted telephonically.

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

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.

Pre-Hearing Conference

A pre-hearing conference call will be held upon request. *See* Consolidated Trial Practice Guide 82 (Nov. 2019), *available at* <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>. Any request for a pre-hearing conference must be made **by Wednesday, November 18, 2020** (Paper 11 (Scheduling Order), 10) and must be submitted to Trials@uspto.gov, with an identification of several dates and times of availability for both parties. The prehearing conference is not required; absent a request, no call will be held.

Prior to making a request, the parties should meet and confer and send one joint request to the Board with an agreed upon set of limited issues for discussion in the pre-hearing conference. If the parties are unable to agree on the issues to be addressed at the pre-hearing conference, the joint request shall specify which issues are disputed and provide a brief statement (not to exceed one sentence) of the opposing party's objection. Issues appropriate for discussion in a pre-hearing conference may include objections to demonstratives, pending motions (particularly motions to exclude), procedures for handling confidential information during the hearing, and any other issue that may affect the ability of a party to present its arguments at the hearing. Any issues discussed at the pre-hearing conference do not limit the scope of the oral hearing.

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. 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) 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.

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