

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION and HP INC.,
Petitioner,

v.

SYNKLOUD TECHNOLOGIES, LLC,
Patent Owner.

IPR2020-00316
Patent 9,098,526 B1

Before SALLY C. MEDLEY, JESSICA C. KAISER, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

Petitioner and Patent Owner have each filed requests for oral hearing in the above captioned proceeding, pursuant to 37 C.F.R. § 42.70. Papers 36, 37. The parties request thirty minutes total argument time per party. *Id.* The requests for oral hearing are *granted* according to the terms set forth in this Order.

The oral hearing will commence at 1:00 PM Eastern Time on April 7, 2021, 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 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 PTABHearings@uspto.gov 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.

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 should notify PTAB Hearings at the above email address five (5) business days prior to the hearing to receive dial-in connection information.

Each party will have thirty (30) minutes of total time to present arguments. Petitioner will proceed first to present its case with regard to the challenged claims and grounds set forth in the Petition. Thereafter, Patent Owner may respond to Petitioner's case. Petitioner may use any of its remaining time for rebuttal regarding Patent Owner's arguments regarding the challenged claims. And, thereafter, Patent Owner may use any of its remaining time for sur-rebuttal, to respond to Petitioner's rebuttal arguments. The parties are reminded that arguments made during rebuttal and sur-rebuttal periods must be responsive to arguments the opposing party made in its immediately preceding presentation.

At least seven (7) business days prior to the hearing, each party shall serve on the other party any demonstrative exhibit(s) it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). At least five (5) business days prior to the hearing, the parties shall file any demonstrative exhibits in this case.

Demonstrative exhibits used at the oral hearing are aids to oral argument and not evidence. The Board expects the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. For any issue that cannot be resolved after conferring with the opposing party, the parties may email jointly to Trials@uspto.gov a one-page list of objections at least five (5) 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 short 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.

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.

The Board has established the "Legal Experience and Advancement Program," or "LEAP," to encourage advocates before the Board to develop their skills and to aid in succession planning for the next generation. The Board defines a LEAP practitioner as a patent agent or attorney having three (3) or fewer substantive oral arguments in any federal tribunal, including PTAB, *and* seven (7) or fewer years of experience as a licensed attorney or agent.²

Parties are encouraged to participate in the Board's LEAP program. Either party may request that a LEAP practitioner participate in the program and conduct at least a portion of the party's oral argument. In exchange, the Board will grant up to fifteen (15) minutes of additional argument time to that party, depending on the length of the proceeding and the PTAB's hearing schedule. A party should submit a request no later than at least

² Whether an argument is "substantive" for purposes of determining whether an advocate qualifies as a LEAP practitioner will be made on a case-by-case basis with considerations to include, for example, the amount of time that the practitioner argued, the circumstances of the argument, and whether the argument concerned the merits or ancillary issues.

five (5) business days before the hearing, by email to the Board at PTABHearings@uspto.gov.³

A LEAP practitioner may conduct the entire oral argument or may share time with other counsel, provided that the LEAP practitioner is offered a meaningful and substantive opportunity to argue before the Board. The party has the discretion as to the type and quantity of oral argument that will be conducted by the LEAP practitioner.⁴ Moreover, whether the LEAP practitioner conducts the argument in whole or in part, the Board will permit more experienced counsel to provide some assistance to the LEAP practitioner, if necessary, during oral argument, and to clarify any statements on the record before the conclusion of the oral argument. Importantly, the Board does not draw any inference about the importance of a particular issue or issues, or the merits of the party's arguments regarding that issue, from the party's decision to have (or not to have) a LEAP practitioner argue.

In instances where an advocate does not meet the LEAP eligibility requirements, either due to the years of experience as a licensed attorney/patent agent or the number of "substantive" oral hearing arguments, but nonetheless has a basis for considering themselves to be in the category of advocates that this program is intended to assist, the Board encourages argument by such advocates during oral hearings. Even though additional

³ Additionally, a LEAP Verification Form shall be submitted by the LEAP practitioner, confirming eligibility for the program. A combined LEAP Practitioner Request for Oral Hearing Participation and Verification Form is available on the LEAP website, www.uspto.gov/leap.

⁴ Examples of the issues that a LEAP practitioner may argue include claim construction argument(s), motion(s) to exclude evidence, or patentability argument(s) including, e.g., analyses of prior art or objective indicia of non-obviousness.

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