

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

COREPHOTONICS, LTD.,
Patent Owner.

IPR2020-00878 (Patent 10,330,897 B2)
IPR2020-00896 (Patent 10,317,647 B2)
IPR2020-00897 (Patent 10,324,277 B2)¹

Before BRYAN F. MOORE, GREGG I. ANDERSON,
MONICA S. ULLAGADDI, JOHN R. KENNY, and BRENT M. DOUGAL,
*Administrative Patent Judges.*²

ULLAGADDI, *Administrative Patent Judge*

ORDER
Setting Oral Argument
37 C.F.R. § 42.70

¹ This Order addresses issues that are the same in each of the above-identified proceedings. We issue one Order to be entered in each proceeding. The parties are not authorized to use this style caption unless later permitted.

² This is not an expanded panel of the Board. It is a listing of all the Judges on the panels of the above-listed proceedings.

IPR2020-00878 (Patent 10,330,897 B2)
IPR2020-00896 (Patent 10,317,647 B2)
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I. ORAL ARGUMENT

Petitioner and Patent Owner have requested oral argument pursuant to 37 C.F.R. § 42.70(a). Paper 20; Paper 21.³ Per the parties' request, the hearing date for IPR2020-00878 is moved to the hearing date of IPR2020-00896 and IPR2020-00897, namely, September 8, 2021. Petitioner's and Patent Owner's requests for oral argument and to move the hearing date of IPR2020-00878 are *granted* according to the terms set forth in this Order.

A. Time and Format

Oral argument in IPR2020-00878 will commence at **1:00 PM Eastern Time on Wednesday September 8, 2021**, by video.⁴ Oral argument in IPR2020-00896 and IPR-00897 will follow. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearings.

Petitioner will have **a total of sixty (60)** minutes to present argument in each case and Patent Owner will have **a total of sixty (60)** minutes in each case to respond. Thus, we will hear up to two hours of argument in IPR2020-00878 followed by up to two hours of argument in IPR2020-00896 and then followed by up to two hours of argument in IPR2020-00897 for a total of six hours. After arguments are heard in IPR2020-00878, we will recess to change the panel, and proceed to hear arguments in IPR2020-00896. After arguments are heard in IPR2020-00896, we will again recess

³ We refer to the papers filed in IPR2020-00878, unless otherwise noted. Similar papers were filed in IPR2020-00896 and in IPR2020-00897.

⁴ If there are any concerns about disclosing confidential information, the parties must contact the Board at Trials@uspto.gov at least ten (10) business days before the hearing date.

IPR2020-00878 (Patent 10,330,897 B2)
IPR2020-00896 (Patent 10,317,647 B2)
IPR2020-00897 (Patent 10,324,277 B2)

to change the panel, and proceed to hear arguments in IPR2020-00897. For each case, Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. Thereafter, Patent Owner will respond to Petitioner's argument. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. In accordance with the Consolidated Trial Practice Guide⁵ ("CTPG"), issued in November 2019, Patent Owner may request to reserve time for a brief sur-rebuttal. *See* CTPG 83.

Either party may request a pre-hearing conference. *See* CTPG at 82; *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019). "The purpose of the pre-hearing conference is to afford the parties the opportunity to preview (but not argue) the issues to be discussed at the hearing, and to seek the Board's guidance as to particular issues that the panel would like addressed by the parties." *Id.* Requests must be made by August 24, 2021. *See* Paper 8, 10 (Due Date 6) in IPR2020-00896. To request such a conference, the parties should jointly contact the Board at Trials@uspto.gov and include several dates and times of availability that are generally no later than three business days prior to the oral hearing.

B. Demonstratives

As set forth in 37 C.F.R. § 42.70(b), demonstratives shall be served on opposing counsel at least seven (7) business days before the hearing date and filed with the Board no later than September 3, 2021 (three (3) business days before the hearing date).

⁵ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

IPR2020-00878 (Patent 10,330,897 B2)
IPR2020-00896 (Patent 10,317,647 B2)
IPR2020-00897 (Patent 10,324,277 B2)

Demonstratives are not a mechanism for making new arguments. Demonstratives also are not evidence, and will not be relied upon as evidence. Rather, demonstratives are visual aids to a party's oral presentation regarding arguments and evidence previously presented and discussed in the papers. Accordingly, demonstratives shall be clearly marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (holding that the Board is obligated under its own regulations to dismiss untimely argument "raised for the first time during oral argument"). "[N]o new evidence may be presented at the oral argument." CTPG 85; *see also St. Jude Med., Cardiology Div., Inc. v. The Bd. of Regents of the Univ. of Mich.*, IPR2013-00041, Paper 65, 2–3 (PTAB Jan. 27, 2014) (explaining that "new" evidence includes evidence already of record but not previously discussed in any paper of record).

Furthermore, because of the strict prohibition against the presentation of new evidence or arguments at a hearing, it is strongly recommended that each demonstrative include a citation to a paper in the record, which allows the Board to easily ascertain whether a given demonstrative contains "new" argument or evidence or, instead, contains only that which is developed in the existing record.

Due to the nature of the Board's consideration of demonstratives and the opportunity afforded for the parties to reach an agreement without involving the Board, the Board does not anticipate that objections to demonstratives are likely to be sustained. Nevertheless, to the extent that a party objects to the propriety of any demonstrative, the parties shall meet

IPR2020-00878 (Patent 10,330,897 B2)
IPR2020-00896 (Patent 10,317,647 B2)
IPR2020-00897 (Patent 10,324,277 B2)

and confer in good faith to resolve any objections to demonstratives prior to filing the objections with the Board. If such objections cannot be resolved, the parties may file any objections to demonstratives with the Board no later than the time of the hearing. The objections shall identify with particularity which portions of the demonstratives are subject to objection (and should include a copy of the objected-to portions) and include a one (1) sentence statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider any objections, and may reserve ruling on the objections.⁶ Any objection to demonstratives that is not timely presented will be considered waived.

Finally, the parties are reminded that each presenter should identify clearly and specifically each paper (e.g., by slide or screen number for a demonstrative) referenced during the hearing to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically.

C. Presenting Counsel

The Board generally expects lead counsel for each party to be present at the hearing. *See* CTPG 11. Any counsel of record may present the party's argument as long as that counsel is present by video.

⁶ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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