

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
Petitioner,

v.

PARKERVISION, INC.,
Patent Owner.

IPR2020-01265
Patent 7,110,444 B1

Before MICHAEL R. ZECHER, BART A. GERSTENBLITH, and
IFTIKHAR AHMED, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

ORDER
Granting the Parties' Requests for Oral Hearing
37 C.F.R. § 42.70

Each of the parties in the above-captioned proceeding filed a request for oral hearing, pursuant to 37 C.F.R. § 42.70. Papers 28 (Petitioner's request), 30 (Patent Owner's corrected request). Petitioner requests 60 minutes of argument time for each side (Paper 28, 1), while Patent Owner requests 75 minutes per side (Paper 30, 2). The parties' requests for oral hearing are *granted* in accordance with the terms set forth in this Order.

The oral hearing will commence at 9:00 AM Eastern Time on November 1, 2021, by video.¹ Based on the issues raised in this proceeding that involves only three challenged claims, each party will have 60 minutes of total time to present arguments, and a transcript will be prepared. Petitioner will proceed first to present its case with regard to the challenged claims and grounds set forth in the Petition. Petitioner may reserve time for rebuttal. Thereafter, Patent Owner may respond to Petitioner's argument and may reserve time for sur-rebuttal. Petitioner may then present its rebuttal followed by Patent Owner's sur-rebuttal. *See* Consolidated Trial Practice Guide 83 ("CTPG").² The parties are reminded that arguments made in rebuttal and sur-rebuttal must be responsive to arguments the opposing party made in its immediately preceding presentation.

The parties may only rely upon evidence that has been previously submitted in the proceeding and may only present arguments that have been previously made in the submitted papers. No new evidence or arguments

¹ U.S. Patent and Trademark Office facilities remain closed to the public. If and when conditions allow in-person hearing attendance, the parties will be notified and may be permitted to submit a joint request to convert the current video hearing to an in-person hearing. The requests will be considered on a case-by-case basis, and subject to resource availability.

² *Available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

may be presented at the hearing. The parties have not requested to present live testimony during the hearing; thus, live testimony will not be permitted.

Official Record

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Conducting the Hearing by Video

As mentioned above, the oral hearing will be conducted by video. The Board generally expects lead counsel for each party to be present at the hearing via video. *See* CTPG 11. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than **three (3) business days** prior to the oral hearing to discuss the matter. Any counsel of record may present the party's argument as long as that counsel is also present by video.

During the hearing, if 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.³

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least **five (5) business days** prior to the 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

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

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will be provided with dial-in connection information, and the hearing will be conducted telephonically.

If one or both parties would prefer to participate in the hearing telephonically, they must contact the Board at PTABHearings@uspto.gov at least **five (5) business days** prior to the hearing date to receive dial-in connection information.

Counsel should unmute only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. During the hearing, the parties are reminded to identify clearly and specifically each paper referenced (e.g., by slide or screen number for a demonstrative) to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically. In addition, the parties are advised to identify themselves each time they speak. Furthermore, the remote nature of the 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 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 at PTABHearings@uspto.gov at least **ten (10) business days** prior to the hearing date.

Pre-Hearing Conference

Either party may request a pre-hearing conference. *See* CTPG 82; *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019). Requests must be made by October 21, 2021. *See* Paper 11 (Scheduling Order), 10 (Due Date 7). 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 (3) business days** prior to the hearing.

Demonstrative Exhibits

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.

Demonstratives are not a mechanism for making new arguments. Demonstrative exhibits used at the hearing are not evidence, nor will they 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. Accelaron, 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. Bd. of Regents of the Univ. of Mich.*, IPR2013-00041, Paper 65 at 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 the record, which allows the Board

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