

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

NANOCO TECHNOLOGIES LTD.,
Patent Owner.

IPR2021-00182 (Patent 9,680,068 B2)
IPR2021-00183 (Patent 7,588,828 B2)
IPR2021-00184 (Patent 7,803,423 B2)
IPR2021-00185 (Patent 7,867,557 B2)
IPR2021-00186 (Patent 8,524,365 B2)¹

Before ERICA A. FRANKLIN, GRACE KARAFFA OBERMANN, and
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

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

¹ This Order applies to each of the above-listed proceedings. We exercise our discretion to issue one Order to be filed in each proceeding. Unless otherwise authorized, the parties shall not use this heading style in any subsequent papers.

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I. ORAL ARGUMENT

Both parties have requested oral argument in these related proceedings. Paper 36; Paper 37.² Those requests are granted subject to the guidelines below.

A. Time and Format

Oral arguments will commence at 1:00 pm Eastern Time on February 23, 2022, by video.³ The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Petitioner will have a total of ninety (90) minutes to present argument in this case and Patent Owner will have a total of ninety (90) minutes to respond, with the time divided as follows. Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial in IPR2021-00182. Thereafter, Patent Owner will respond to Petitioner's argument in IPR2021-00182. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. In accordance with the Consolidated Trial Practice Guide⁴ ("CTPG"), issued in November

² Citations to the record refer to the papers and exhibits filed in IPR2021-00182. Except where noted, similar filings exist in the other proceedings as well.

³ 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.

⁴ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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2019, Patent Owner may request to reserve time for a brief sur-rebuttal. *See* CTPG 83. The total time for the arguments in IPR2021-00182, including Petitioner’s case-in-chief, Patent Owner’s response, Petitioner’s rebuttal, and Patent Owner’s sur-rebuttal, will be 60 minutes, with each side having 30 minutes in total.

After the arguments in IPR2021-00182, Petitioner will present its case regarding the challenged claims for which the Board instituted trial in IPR2021-00183, IPR2021-00184, IPR2021-00185, and IPR2021-00186. Thereafter, Patent Owner will respond to Petitioner’s argument in those four proceedings. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. In accordance with the CTPG, Patent Owner may request to reserve time for a brief sur-rebuttal. *See* CTPG 83. The total time for the arguments in IPR2021-00183, IPR2021-00184, IPR2021-00185, and IPR2021-00186, including Petitioner’s case-in-chief, Patent Owner’s response, Petitioner’s rebuttal, and Patent Owner’s sur-rebuttal, will be 120 minutes, with each side having 60 minutes in total.

The parties may request a pre-hearing conference in advance of the hearing. *See id.* at 82. “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.* If either party desires a pre-hearing conference, the parties should jointly contact the Board at Trials@uspto.gov at least seven (7) business days before the hearing date to request a conference call for that purpose.

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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 no later than two (2) business days before the hearing.⁵

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. 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. 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

⁵ The parties may stipulate to an alternative schedule for serving and filing demonstratives, and request that the Board modify the schedule for filing and serving demonstratives at least seven (7) business days before the hearing date.

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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 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

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

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