

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RING CENTRAL, INC.,
Petitioner,

v.

ESTECH SYSTEMS, INC.,
Patent Owner.

IPR2021-00573 (Patent 6,067,349)
IPR2021-00574 (Patent 8,391,298)

Before THOMAS L. GIANNETTI, JENNIFER MEYER CHAGNON, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

PER CURIAM.

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

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I. ORAL ARGUMENT

A. *Time and Format*

Petitioner and Patent Owner have each requested an oral hearing in these cases. The parties have jointly requested that the hearings be conducted virtually by video conference. Those requests are granted.

A consolidated oral argument will commence at 1 PM Eastern Time on July 12, 2022, by video. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. The parties are directed to contact the Board at least ten days in advance of the hearing if there are any concerns about disclosing confidential information.

Each party will have a total of 90 minutes to present its argument in both cases. Based on the issues presented, Petitioner will open the hearing by presenting its case regarding the unpatentability of the challenged claims in both cases. After Petitioner's presentation, Patent Owner will present its case and respond to Petitioner's arguments regarding the patentability of the challenged claims in both cases. Petitioner may reserve rebuttal time to respond to Patent Owner's argument. Patent Owner may request a brief sur-rebuttal as set forth in the Board's Consolidated Trial Practice Guide (November 2019), available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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

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desires a pre-hearing conference, the parties should jointly contact the Board at Trials@uspto.gov at least seven business days before the hearing date to request a conference call for that purpose.

B. Demonstratives

As set forth in 37 C.F.R. § 42.70(b), demonstratives shall be served on opposing counsel at least seven business days before the hearing date. In addition to the service requirement of 37 C.F.R. § 42.70(b), each party also shall file its demonstrative exhibits with the Board as a separate paper at least five business days prior to the hearing. A copy of the demonstratives should also be sent by email to PTABHearings@uspto.gov.

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." Consolidated Trial Practice Guide 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).

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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.

To the extent that a party objects to 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 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. Any objection to demonstratives that is not timely presented will be considered forfeited.

Finally, the parties are reminded that each presenter should identify clearly and specifically each demonstrative (e.g., by slide or screen number) or other paper 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* Consolidated Trial Practice Guide 11. Any counsel of record may present the party's argument as long as that counsel is present by video.

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D. Video or Telephonic Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least five 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 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 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.

If at any time during the hearing, counsel encounters technical or other difficulties that fundamentally undermine counsel's ability to

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