

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

DAEDALUS BLUE, LLC,
Patent Owner.

IPR2021-00830 (Patent 8,572,612 B2)
IPR2021-00831 (Patent 8,671,132 B2)¹

Before SALLY C. MEDLEY, HYUN J. JUNG, and ARTHUR M. PESLAK,
Administrative Patent Judges.

MEDLEY, *Administrative Patent Judge.*

ORDER
Oral Hearing
37 C.F.R. § 42.70

¹ This Order applies to each of the above-listed proceedings. We exercise our discretion to issue one combined Order to be filed in each case. The parties, however, are not authorized to use this filing style in subsequent papers.

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Petitioner and Patent Owner have each filed requests for an oral hearing in the above captioned proceedings, pursuant to 37 C.F.R. § 42.70. IPR2021-00830, Papers 26, 27; IPR2021-00831, Papers 36, 37. The parties' request to hold the hearings in the two proceedings on the same day (August 10, 2022) was granted. Ex. 3001. The requests for an oral hearing are *granted* according to the terms set forth in this Order.

Time and Format

The oral hearing for IPR2021-00830 will commence at 9:00 AM Eastern Time on August 10, 2022 in Hearing Room A on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.^{2,3} The oral hearing for IPR2021-00831 will commence at approximately 10:00 AM Eastern Time the same day.⁴ 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.

Each party will have thirty (30) minutes of total time to present arguments in the hearing for IPR2021-00830 for a total hearing time of sixty (60) minutes. Each party will have forty-five (45) minutes of total time to present arguments for IPR2021-00831 for a total hearing time of ninety (90)

² If a party is no longer able to appear in-person for the hearing, the party must contact PTABHearings@uspto.gov as soon as possible.

³ The U.S. Patent and Trademark Office ("USPTO") is concerned with the health and safety of all of its stakeholders, and will continue to follow all applicable health guidance. Prior to arriving at any USPTO office location, please consult the following to verify entry requirements:

<https://www.uspto.gov/coronavirus>.

⁴ There will be a brief break between the two oral hearings.

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minutes. In each oral hearing, 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. 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. 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.

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.

Demonstratives

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. Demonstratives also are not evidence, and will not be relied upon as

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

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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).

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.

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

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accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically.

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 lead counsel is present in person.

Remote Attendance Requests

Members of the public may request to listen to and/or view 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.

Audio/Visual Equipment Requests

Any special requests for audio-visual equipment should be directed to PTABHearings@uspto.gov. A party may also indicate any special requests related to appearing at an in-person hearing, such as a request to accommodate deaf or hard-of-hearing individuals and blind or low vision individuals, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication at least five (5) business days before the hearing date.

Legal Experience and Advancement Program

The Board has established the "Legal Experience and Advancement Program," or "LEAP," to encourage advocates with less legal experience to argue before the Board to develop their skills. The Board defines a LEAP

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