

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TCL INDUSTRIES HOLDINGS CO., LTD., HISENSE CO., LTD., and
LG ELECTRONICS INC.,
Petitioners,

v.

PARKERVISION, INC.,
Patent Owner.

IPR2021-00985 (Patent 7,292,835 B2)¹

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

GERSTENBLITH, *Administrative Patent Judge*.

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

¹ LG Electronics Inc., who filed a petition in IPR2022-00246, is joined as petitioner in IPR2021-00985.

I. ORAL ARGUMENT

A. Time and Format

Each of the parties in the above-captioned proceeding filed a request for oral argument, pursuant to 37 C.F.R. § 42.70(a). Papers 33 (Patent Owner's request), 34 (Petitioner's request). The parties request 60 minutes of argument time for each side. *See* Paper 33 at 1; Paper 34 at 1. The parties' requests for oral argument are *granted*.

Oral arguments will commence at **10:00 AM Eastern Time on September 8, 2022, by video.**² 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 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

² The U.S. Patent and Trademark Office resumed the opportunity for in-person hearings while also maintaining the option for hearings to be conducted virtually by video conference. At this time, if either party requests a virtual hearing by video conference, the hearing will be conducted virtually for all parties. In this case, Patent Owner's counsel indicates that they are appearing at an in-person hearing in Texas the day before the oral hearing in this proceeding and thus requests a virtual hearing in this proceeding. *See* Ex. 3007 (Email from T. Mayle on behalf of both parties, dated Aug. 18, 2022). Accordingly, we grant that request, as indicated above.

sur-rebuttal. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), at 83 (“CTPG”).³

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. Additionally, 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 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.

B. Pre-Hearing Conference

Either party may request a pre-hearing conference. *See* CTPG 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.” CTPG 82. Requests must be made by **August 26, 2022**.⁴ 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.

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

⁴ This date is later than the August 12, 2022, date provided in the Scheduling Order to provide additional time to the parties. *See* Paper 15 (Scheduling Order) at 10 (DUE DATE 7).

C. 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. 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. 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 to easily ascertain whether a given demonstrative contains "new" argument or evidence.

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 Board expects the parties will meet and confer in good faith to resolve any objections prior to raising the objections with the Board. For any objection to a demonstrative 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 **four (4) 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. The Board will consider any objections, and may reserve ruling on the objections until at or after the hearing.⁵ Any objection to demonstratives that is not timely presented will be considered waived.

D. 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. 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.

⁵ If time permits, the Board may schedule a conference call with the parties to discuss any objections raised prior to the hearing.

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