

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CONFIGIT A/S,
Petitioner,

v.

VERSATA DEVELOPMENT GROUP, INC.,
Patent Owner.

IPR2021-01055
Patent 6,836,766 B1

Before KEVIN F. TURNER, DEBRAK. STEPHENS, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

Petitioner and Patent Owner each request an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 18, 19. Upon consideration, the requests for an oral hearing are *granted*.

Oral arguments will commence at 3:40 PM PACIFIC TIME on September 16, 2022, in person at the University of Oregon Law School, White Stage Building, 70 NW Couch Street, Portland, OR 97209. The hearing will be part of a special PTAB/TTAB Stadium Tour program. The parties are welcome to attend the entire program and do not need to register for the program.

Each party will have forty-five (45) minutes of total time to present arguments. Petitioner will proceed first to present its case with regard to the challenged claims and grounds set forth in the Petition because it is the party with the burden of proof and persuasion. Thereafter, Patent Owner may respond to Petitioner's case. Petitioner and Patent Owner may reserve some, but no more than half, of the allotted time for rebuttal and sur-rebuttal, respectively. 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 also are reminded that during the hearing, the parties "may only present arguments relied upon in the papers previously submitted." Patent Trial and Appeal Board Consolidated Trial Practice Guide ("CTPG") 86 (Nov. 2019).¹

At least three (3) 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 two (2) business days prior

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

to the hearing, each party shall file any demonstrative exhibits it intends to use during the hearing as exhibits.

Demonstrative exhibits used at the oral hearing are aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide of a demonstrative exhibit may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the “Board was obligated to dismiss [the petitioner’s] untimely argument . . . raised for the first time during oral argument”).

The parties shall attempt to work out any objections to demonstratives prior to involving the Board. Should either party disagree with the propriety of any of the opposing party’s demonstratives, the party may send, contemporaneously with submitting their own slides two (2) business days prior to the hearing, an email to Trials@uspto.gov including a paper limited to identifying the opposing party’s slide(s) objected to and a brief sentence as to the general basis of the objection(s). No further argument is permitted in that paper. The Board will then take the objections under advisement, and if the content is inappropriate, it will not be considered. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The Board asks the parties to confine demonstrative exhibit objections to those identifying egregious violations that are prejudicial to the administration of justice. The parties are directed to *St. Jude Med., Cardiology Div., Inc. v. The Board of Regents of the Univ. of Mich.*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014), for guidance regarding the

appropriate content of demonstrative exhibits. In general, if the content on a slide cannot be readily associated with an argument made, or evidence referenced, in a substantive paper, it is inappropriate. The best practice is to indicate on each slide where support may be found in a substantive paper and/or exhibit or record in this proceeding.

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.

Members of the public will be attending this hearing. The parties are directed to contact the Board at least three(3) 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.

As always, all practitioners appearing before the Board must demonstrate the highest professional standards. The Board expects all practitioners to have a command of the factual record, the applicable law, and Board procedures, as well as the authority to commit the party they represent. The Board generally expects lead counsel for each party to be present at the virtual hearing. *See* CTPG 11.

Accordingly, it is

ORDERED that an in-person oral hearing, conducted pursuant to the procedures outlined above, will commence at 3:40 PM PACIFIC TIME on September 16, 2022, in person at the University of Oregon Law School, White Stage Building, 70 NW Couch Street, Portland, OR 97209.

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