

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MEMORYWEB, LLC,
Patent Owner.

IPR2022-00031 (Patent 10,621,228 B2)
IPR2022-00032 (Patent 9,552,376 B2)
IPR2022-00033 (Patent 10,423,658 B2)
PGR2022-00006 (Patent 11,017,020 B2)¹

Before LYNNE H. BROWNE, NORMAN H. BEAMER,
KEVIN C. TROCK, and JASON M. REPKO, *Administrative Patent Judges.*

REPKO, *Administrative Patent Judge.*

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

¹ The parties are not authorized to use this filing style in subsequent papers.

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I. ORAL ARGUMENT

A. *Time and Format*²

Petitioner and Patent Owner each filed requests for oral argument pursuant to 37 C.F.R. § 42.70(a). Papers 29, 30.³ Petitioner requests 90 minutes per side and “defers to the preferences of the Board as to whether the hearing is in person or by videoconference.” Paper 29, 1. Patent Owner requests two hours per side and a virtual hearing. Paper 30, 2–3. Under our current policy, the Board will only conduct an in-person hearing when requested by all parties. *See* <https://www.uspto.gov/patents/ptab/hearings>. Thus, the oral argument in this case will commence at 1:00 PM Eastern Time on March 14, 2023 by video conference.

The Board will provide a court reporter for the consolidated hearing, and the reporter’s transcript will constitute the official record of the hearing.

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.

Petitioner will have a total of 90 minutes to present its arguments, and Patent Owner will have a total of 90 minutes to respond. Specifically, Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. Thereafter, Patent Owner will respond to Petitioner’s argument. Petitioner may reserve

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 Similar requests were made in all four proceedings. For brevity, the citations in this order refer to the papers in IPR2022-00031.

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rebuttal time to respond to arguments presented by Patent Owner. In accordance with the Consolidated Trial Practice Guide⁴ (“CTPG”), issued in November 2019, Patent Owner may request to reserve time for a brief sur-rebuttal. *See* CTPG 83.

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.

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.⁵

The parties shall file their demonstratives as exhibits no later than March 10, 2023.

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

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

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

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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 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

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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 demonstrative) 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* CTPG 11. Any counsel of record may present the party's argument as long as that counsel is present in person.

D. 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

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

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