

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

LOGANTREE, LP,
Patent Owner.

IPR2022-00037
IPR2022-00040¹
Patent 6,059,576

Before PATRICK R. SCANLON, MITCHELL G. WEATHERLY, and
JAMES A. WORTH, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

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

¹ This Order pertains to both proceedings. We exercise our discretion to issue one order to be entered in each proceeding. The parties are not authorized to use this joint heading and filing style in subsequent papers.

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I. ORAL ARGUMENT

We instituted *inter partes* review in each of the above-identified proceedings on September 1, 2022. Paper 10.² The Scheduling Order for these proceedings sets the date for oral argument as June 2, 2023, if requested by the parties and granted by the Board. Paper 11, 11. On April 20, 2023, Petitioner filed a request for oral argument. Paper 23. Patent Owner did not request oral argument. During a conference call on April 28, 2023, between respective counsel for the parties and Judges Scanlon and Weatherly, Patent Owner indicated that it did not feel that oral argument was necessary in these proceedings, but would want to participate if oral argument was held. Petitioner's request for oral argument is *granted*.

A. Time and Format

Consolidated oral arguments for the two proceedings identified above will commence at **9 a.m. Eastern Time on June 2, 2023**, by video.³ The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Petitioner will have a total of eighty (80) minutes to present argument in this case and Patent Owner will have a total of eighty (80) minutes to respond. 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 We cite to the record in IPR2022-00037; similar papers were filed in IPR2022-00040.

³ 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.

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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 oral 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 and filed no later than three (3) business days before the hearing.⁵

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

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

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

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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 86; *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 than the time of the hearing. The objections shall identify with particularity

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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.

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 by video.

D. Video or Telephonic Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least five (5) 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

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

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