

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

SCRAMOGE TECHNOLOGY LTD.,  
Patent Owner.

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IPR2022-00120  
Patent 9,997,962 B2

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*Before* JAMESON LEE, KARL D. EASTHOM, and  
AARON W. MOORE, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

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

## I. ORAL ARGUMENT

Apple Inc. (“Petitioner”) and Scramoge Technology Ltd. (“Patent Owner”) each request oral argument pursuant to 37 C.F.R. § 42.70(a). Papers 23, 24. We grant the requests subject to the procedures set forth below.

### A. Time and Format

The Board’s current policy is to conduct an in-person hearing only if both parties request an in-person hearing. *See* Patent Trial and Appeal Board Hearings updated June 23, 2022, *available at* <https://www.uspto.gov/patents/ptab/hearings>. Petitioner requests a hearing via videoconference. Paper 24. Accordingly, oral argument shall begin at 10:00 am Eastern Time on February 2, 2023 via videoconference.

The Board will provide a court reporter and the reporter’s transcript will constitute the official records of the hearing. Petitioner will have a total of sixty (60) minutes to present argument and Patent Owner will have a total of sixty (60) 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 rebuttal time to respond to arguments presented by Patent Owner. In accordance with the Consolidated Trial Practice Guide (“CTPG”), issued in November 2019, Patent Owner may request to reserve time for a brief sur-rebuttal.<sup>1</sup> *See* CTPG 83.

The parties may request a pre-hearing conference in advance of the hearing. *See* CTPG 82. “The purpose of the pre-hearing conference is to

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

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](mailto:Trials@uspto.gov) on or before January 17, 2023, to request a conference call for that purpose.

*B. Demonstratives*

As set forth in 37 C.F.R. § 42.70(b), any demonstratives shall be served on opposing counsel at least seven (7) business days before the hearing date and filed with the Board, as a separate Exhibit in accordance with 37 C.F.R. § 42.63, at least three (3) business day before the hearing date.<sup>2</sup> The parties should consider the information regarding demonstrative materials discussed in the CTPG.

Demonstratives are not a mechanism for new arguments and are not 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. 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 86; *see also St. Jude Med., Cardiology Div., Inc. v. The*

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<sup>2</sup> The parties may stipulate to an alternative schedule for serving and filing demonstratives.

*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, each demonstrative must 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 one business day before 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.<sup>3</sup> Any objection to demonstratives that is not timely presented will be considered waived.

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<sup>3</sup> If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

Finally, 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 notify the Board at [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov) at least ten (10) business days prior to the hearing date.

*E. Audio/Visual Equipment Requests*

Any special requests for audio-visual equipment should be directed to [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov). A party may also indicate any special requests related to appearing at a video 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.

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