

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

BILLJCO LLC,
Patent Owner.

IPR2022-00129 (Patent 8,566,839 B2)
IPR2022-00131 (Patent 8,639,267 B2)¹

Before LYNNE H. BROWNE, STACEY G. WHITE, and GARTH D.
BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ This Order addresses a panel change pertaining to the above-referenced proceedings. The parties are not permitted to use this caption unless authorized by the Board.

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Petitioner and Patent Owner each request an oral hearing pursuant to 37 C.F.R. § 42.70. IPR2022-00129, Papers 29, 30; IPR2022-00131, Papers 28, 29. Upon consideration, the requests for an oral hearing are *granted*.

A combined oral argument for both IPR2022-00129 and IPR2022-00131 will commence at 3:40 PM MOUNTAIN TIME on February 23, 2023, in person at The Great Hall, Sandra Day O'Connor College of Law, Arizona State University, 111 E. Taylor Street, Phoenix, AZ 85004. 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 sixty (60) minutes of total time to present arguments for both cases. Because Petitioner has the burden of proof and persuasion, Petitioner will proceed first to present its case in both IPR2022-00129 and IPR2022-00131 with regard to the challenged claims and grounds set forth in the Petitions. Thereafter, Patent Owner may respond to Petitioner's cases. 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).²

² Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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 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

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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.

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Accordingly, it is

ORDERED that an in-person combined oral hearing, conducted pursuant to the procedures outlined above, will commence at 3:40 PM MOUNTAIN TIME on February 23, 2023, in person at The Great Hall, Sandra Day O'Connor College of Law, Arizona State University, 111 E. Taylor Street, Phoenix, AZ 85004.

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