

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD,
Petitioner,

v.

MEMORYWEB, LLC,
Patent Owner.

IPR2022-00221
Patent 10,423,658 B2

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

BROWNE, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

I. ORAL ARGUMENT

A. Time and Format

Oral arguments will commence in this proceeding, beginning at 1:00 PM EASTERN TIME on May 9, 2023, by video. The parties are directed to contact the Board at least ten 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.

Petitioner and Patent Owner each requested virtual hearings with 60 minutes per side of argument time. Paper 27, 1–2; Paper 29, 2–3. Upon consideration of the parties' requests, and the issues presented in this proceeding, we grant each party 60 minutes of total time to present argument. As the party with the burden of proof and persuasion, Petitioner will proceed first to present its case with regard to the challenged claims and grounds set forth in the Petition. Thereafter, Patent Owner may respond to Petitioner's argument. 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 are also 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

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

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 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 by April 25, 2023, to request a conference call for that purpose.

B. Demonstratives

At least seven 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 five 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 are not evidence. Accordingly, demonstrative exhibits shall be clearly 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) (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 which portions of the demonstratives are subject to objection (and should include a copy of the objected-to portions) and include a one 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.² Any objection to demonstratives that is not timely presented will be considered waived.

² If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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 via video. *See* CTPG 11. Any counsel of record may present the party's argument as long as that counsel is present by video.

D. Video Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least five 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 least five business days prior to the hearing date to receive dial-in connection information.

Counsel should unmute only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. During

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