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Paper No. 28
Date: March 6, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

BILLJCO LLC,
Patent Owner.

IPR2022-00420 (Patent 10,477,994 B2)
IPR2022-00426 (Patent 8,761,804 B2)
IPR2022-00427 (Patent 10,292,011 B2)
IPR2022-00310 (Patent 9,088,868 B2)[1]

Before THU A. DANG, LYNNE H. BROWNE, and GARTH D. BAER, *Administrative Patent Judges.*

BAER, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

[1] These cases have not been joined or consolidated. Rather, this Scheduling Order governs each case. The parties are not authorized to use this heading style.

Petitioner and Patent Owner each request an oral hearing for the above captioned cases pursuant to 37 C.F.R. § 42.70. The requests for an oral hearing are *granted*.

A. Time and Format

A combined oral argument for IPR2022-00420, IPR2022-00426, IPR2022-00427, and IPR2022-00310 will commence at 9:00 AM EASTERN TIME on April 14, 2023, at the USPTO Headquarters in Alexandria, Virginia.

During the first session, each party will have forty-five (45) minutes of total time to present arguments for both IPR2022-00420 and IPR2022-00427. After a short break, each party will then have forty-five (45) minutes of total time to present arguments for both IPR2022-00426 and IPR2022-00310. Because Petitioner has the burden of proof and persuasion, Petitioner will proceed first to present its cases with regard to the challenged claims and grounds set forth in the Petitions. Thereafter, Patent Owner may respond to Petitioner's arguments. 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.

B. Demonstratives

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. The parties should file the same set of demonstrative exhibits for all four cases.

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. Acceleron, 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 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.

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.

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.

D. Legal Experience and Advancement Program

The Board has established the "Legal Experience and Advancement Program," or "LEAP," to encourage advocates with less legal experience to argue before the Board to develop their skills. The Board defines a LEAP practitioner as a patent agent or attorney having three (3) or fewer substantive oral arguments in any federal tribunal, including PTAB.[3]

The parties are encouraged to participate in the Board's LEAP program. Either party may request that a qualifying LEAP practitioner participate in the program and conduct at least a portion of the party's oral argument. The Board will grant up to fifteen (15) minutes of additional argument time to that party for each set of cases, depending on the length of the proceeding and the PTAB's hearing schedule. A party should submit a

[3] Whether an argument is "substantive" for purposes of determining whether an advocate qualifies as a LEAP practitioner will be made on a case-by-case basis with considerations to include, for example, the amount of time that the practitioner argued, the circumstances of the argument, and whether the argument concerned the merits or ancillary issues.

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