

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SCRAMOGE TECHNOLOGY LTD.,
Patent Owner.

IPR2022-00350
Patent 9,806,565 B2

Before JAMESON LEE, KARL D. EASTHOM, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

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

I. ORAL ARGUMENT

In this proceeding, we instituted *inter partes* review (Paper 10) and issued a Revised Scheduling Order (Paper 29) that reset the date for oral hearing to June 2, 2023, if a hearing is requested by the parties and granted by the Board. Both parties request oral hearing pursuant to 37 C.F.R. § 42.70. Paper 26; Paper 27. We note that the parties' requests were filed before our Revised Scheduling Order was entered, when the date for oral hearing had been scheduled for May 4, 2023. Accordingly, unless the parties promptly confer and inform the Board within 7 business days of this Order via email that they do not request an oral hearing, we treat the requests as requests for oral hearing on June 2, 2023. Petitioner asks for 45 minutes per side and that the hearing be held virtually; Patent Owner asks for 60 minutes per side and that the hearing be held in person. *Id.* In accordance with the terms set forth in this Order, we grant the parties' requests for oral argument.

A. Time and Format

Oral argument will commence at 9:00 AM EDT on June 2, 2023, by video.¹ 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 60 minutes to present arguments in this case and Patent Owner will have a total of 60 minutes to respond. Petitioner will open the hearing by presenting its case regarding the challenged claims

¹ 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.

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 Guide² ("CTPG"), issued in November 2019, Patent Owner may request to reserve time for a brief sur-rebuttal; however, Patent Owner's sur-rebuttal is limited in scope to the issues raised during Petitioner's rebuttal. *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 afford the parties the opportunity to preview (but not argue) the issues to be discussed at the 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 (or as stipulated by the parties, but no later than two (2) days before the hearing). Each party also shall file its demonstrative exhibits with the Board as a separate paper at least two business days prior to the hearing.

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

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

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 85; *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.

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 (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.³ 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, in whole or in part, 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 (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 least five (5) business days prior to the hearing date to receive dial-in connection information.

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

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