

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., HP INC., AMAZON.COM, INC., AMAZON.COM
SERVICES LLC, SAMSUNG ELECTRONICS CO., LTD., SAMSUNG
ELECTRONICS AMERICA, INC., GOOGLE LLC, DELL
TECHNOLOGIES INC. and DELL INC.

Petitioner,

v.

XR COMMUNICATIONS LLC

Patent Owner.

IPR2022-00367¹

Patent 10,715,235 B2

Before MIRIAM L. QUINN, BARBARA A. PARVIS, and
JAMES J. MAYBERRY, Administrative Patent Judges.

MAYBERRY, *Administrative Patent Judge.*

¹ Amazon.com, Inc., and Amazon.com Services LLC, which filed a petition in IPR2022-01353; Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Google LLC, which filed a petition in IPR2022-01362, and Dell Technologies Inc. and Dell Inc., which filed a petition in IPR2022-01398, were joined as Petitioner in this proceeding.

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

I. ORAL ARGUMENT

Petitioner and Patent Owner each requests oral hearing in this proceeding. Paper 25, 27. Patent Owner also requests, and Petitioner does not oppose, that we move the date for oral hearing by three weeks². Ex. 3001. The parties indicate that they “have made progress towards a settlement agreement” and this request would allow the parties to continue the settlement process. *Id.*

We determine that good cause exists to extend the oral hearing date. “There are strong public policy reasons to favor settlement between the parties to a proceeding.” Consolidated Trial Practice Guide³ (“CTPG”) 86 (PTAB, Nov. 2019). In light of a possible settlement in this matter, delaying the oral hearing could obviate the need for the hearing, which would conserve resources of the parties and the Board. Accordingly, the oral hearing in this proceeding is moved from April 14, 2023, to May 5, 2023.

No further extensions of time of the oral hearing will be granted.

² The Scheduling Order governing this proceeding requires the parties to seek authorization to change the date for the oral argument. Paper 11, 8.

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

A. Time and Format

Oral arguments will commence at 2:00 Eastern Time on May 5, 2023, by VIDEO.⁴ *See* Ex. 3001 (specifying that the parties desire a video-based hearing). 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 sixty (60) minutes to present argument in this case and Patent Owner will have a total of sixty (60) minutes to respond. Petitioner will open the hearing by presenting its case regarding the challenges for which the Board instituted trial. Thereafter, Patent Owner will respond to Petitioner's arguments. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. Patent Owner may request to reserve time for a brief sur-rebuttal.

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 at least seven (7) business days before the hearing date to request a conference call for that purpose.

⁴ 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.

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 and filed no later than three (3) business days before the hearing date.⁵

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 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 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"

⁵ The parties may stipulate to an alternative schedule for *servicing* demonstratives.

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 (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.⁶ Any objection to demonstratives that is not timely presented will be considered waived.

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.

⁶ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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