

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

CPC PATENT TECHNOLOGIES PTY LTD.,  
Patent Owner.

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IPR2022-00600  
Patent 8,620,039 B2

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Before SCOTT A. DANIELS, AMBER L. HAGY and  
FREDERICK C. LANEY, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

ORDER GRANTING REQUESTS FOR ORAL ARGUMENT  
*37 C.F.R. § 42.70*

I. ORAL ARGUMENT

A. *Time and Format*

Petitioner and Patent Owner each requested that an oral hearing be scheduled in this proceeding. Papers 16, 17. For this hearing, Petitioner requested 45 minutes of total argument time and Patent Owner also requested 45 minutes of total argument time. *Id.* Patent Owner did not specifically request either in-person argument or videoconference, and Petitioner proposed a virtual hearing but if “in-person hearings” were allowed, that the hearing take place in the USPTO offices in Alexandria, VA. *Id.* As none of the APJ’s are available to be in Alexandria on July 18, 2023, the parties’ requests are *granted* to the extent each party is allotted 45 minutes to present arguments and the oral hearing will be conducted by videoconference.

**Oral arguments will commence at 1:00 PM Eastern Time on July 18, 2023, by videoconference.** 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. The parties shall not make, or permit others to make, audio or visual recordings of the proceeding.

If at any time during the hearings, you encounter technical or other difficulties that fundamentally undermine your ability to adequately represent your client, please let the panel know immediately, and adjustments will be made.<sup>1</sup>

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<sup>1</sup> For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

IPR2022-00600  
Patent 8,620,039 B2

To facilitate planning, each party must contact PTAB Hearings at [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov) five business days prior to the oral hearing date to receive videoconference set-up information. As a reminder, all arrangements and expenses related to a party's appearance by video, such as the selection of the facility to be used from which a party will attend by video, are the responsibility of that party. If a video connection cannot be established, the parties will be provided with dial-in connection information, and the oral hearing will be conducted telephonically.

If one or both parties would prefer to participate in the oral hearing telephonically, they should notify PTAB Hearings at the above email address five (5) business days prior to the hearing to receive dial-in connection information.

Please unmute yourself only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. During the oral hearing, the parties are advised to identify clearly and specifically each demonstrative referenced (e.g., by slide or screen number) to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically. In addition, the parties are advised to identify themselves each time they speak. Furthermore, the remote nature of the oral hearing may also result in an audio lag, and so the parties are advised to observe a pause prior to speaking, so as to avoid speaking over others.

Having the burden of persuasion (*see* 35 U.S.C. § 316(e)), Petitioner will open the hearing by presenting its case regarding the challenged claims 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. In accordance with the Consolidated

IPR2022-00600

Patent 8,620,039 B2

Trial Practice Guide.<sup>2</sup> (“CTPG”), issued in November 2019, Patent Owner may request to reserve time for a brief surrebuttal, which will be limited to issues raised during Petitioner’s rebuttal. *See* CTPG 83.

*B. Demonstratives and Audio–Visual Equipment*

Pursuant to 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served no later than seven (7) business days before the hearing date. They shall be filed with the Board no later than five (5) business days before the hearing date.

Demonstratives are not a mechanism for making new arguments. Demonstratives also are not evidence, and the Board will not consider them 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 must 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, the Board strongly recommends that each demonstrative include a citation to a paper in the record, which allows the Board to easily ascertain

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

IPR2022-00600

Patent 8,620,039 B2

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 must 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 two (2) business days before the hearing. The objections must 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. Any objection to demonstratives that is not timely presented will be considered waived.

Any special requests for audio-visual equipment should be directed to PTABHearings@uspto.gov. A party may also indicate any special requests related to appearing at a video hearing, such as a request to accommodate deaf, hard-of-hearing, blind, or low-vision individuals, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication at least five (5) business days before the hearing date.

*C. 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

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