

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CODE200, UAB, TESOLT, UAB, METACLUSTER LT, UAB, and
OXYSALES, UAB, AND CORETECHLT, UAB,
Petitioner,

v.

BRIGHT DATALTD.,
Patent Owner.

IPR2021-01492 (Patent 10,257,319 B2)
IPR2021-01493 (Patent 10,484,510 B2)¹

MAJOR DATA UAB,
Petitioner,

v.

BRIGHT DATALTD.,
Patent Owner.

IPR2022-00915 (Patent 10,257,319 B2)
IPR2022-00916 (Patent 10,484,510 B2)

¹ The parties are not authorized to use this caption in other papers.

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Before THOMAS L. GIANNETTI, KEVIN C. TROCK, SHEILA F.
McSHANE, and RUSSELL E. CASS, *Administrative Patent Judges*.²

McSHANE, *Administrative Patent Judge*.

ORDER
Granting Requests for Oral Argument
37 C.F.R. § 42.70(a)

I. ORAL ARGUMENT

A. Time and Format

Counsel for all the parties in the cases conferred and asked the Board whether a single hearing could be conducted in these cases to be set on June 9, 2023. *See* IPR2021-01492, Exhibit 3005.³ The Board agreed that it was more efficient to conduct of a single coordinated hearing in these cases. *Id.*

The parties request that the coordinated hearing for all the cases be conducted remotely by videoconference. Paper 42, 1; Paper 43, 3. The parties request that each side be permitted 60 minutes of argument time. Paper 42, 1; Paper 43, 2. The respective Petitioners, Code 200 and Major Data, agree to split the 60 minutes of total argument time allotted for Petitioners. Paper 42, 1.

We grant the parties' requests. The cases shall be heard together and each side will have 60 minutes of total argument time, with the respective Petitioners splitting the allocated time as they see fit. Petitioners will argue first and may present their arguments on both cases and may reserve no

² This is not an expanded panel of the Board. It is a listing of all Judges on the panels of the above-referenced proceedings.

³ We cite to the parties' papers as filed in IPR2021-01492 as representative of papers filed in each of the identified proceedings.

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more than half of their time for rebuttal. Patent Owner will argue second and may present its arguments on both cases and may reserve no more than half of its time for sur-rebuttal. Petitioners may present rebuttal to respond to arguments made by Patent Owner. Patent Owner may present sur-rebuttal to respond to arguments made by Petitioners.

Oral argument will commence at 1 PM ET on Friday, June 9, 2023 by video. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Patent Owner filed a Motion To Seal (Paper 33) that seeks to seal portions of the record that purportedly contain confidential information. The parties shall confer and notify the Board at least three business days prior to the oral hearing by email to PTABHearings@uspto.gov if the parties anticipate that confidential information will need to be disclosed at the oral hearing. We note that the Board favors public access to oral hearings to provide a complete record for public access, as well as for appellate review.

The parties may request a pre-hearing conference in advance of the hearing. *See* Consolidated Trial Practice Guide⁴ (“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.

⁴ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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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 three (3) business days prior to the hearing. A copy of the demonstratives should also be sent by email to PTABHearings@uspto.gov.

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 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.

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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 one day prior to 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.⁵ 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.

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 lead counsel is also present.

D. Video or Telephonic Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least five (5) business days prior to the

⁵ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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