

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD.,  
Petitioner,

v.

NETLIST, INC.  
Patent Owner.

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IPR2022-00996 (Patent 11,016,918 B2)<sup>1</sup>  
IPR2022-00999 (Patent 11,232,054 B2)

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Before PATRICK M. BOUCHER, JON M. JURGOVAN, and DANIEL J.  
GALLIGAN, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

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

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<sup>1</sup> Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas LLC filed motions for joinder and petitions in IPR2023-00405 and IPR2023-00406 and have been joined as petitioners in this proceeding.

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## I. ORAL ARGUMENT

Petitioner and Patent Owner have requested oral argument in this case. IPR2022-00996 (“996IPR”), Papers 28, 29; IPR2022-00999 (“999IPR”), Papers 29, 30. These requests are granted subject to the conditions stated below.

Petitioner requested a single combined hearing for the 996IPR and 999IPR with 90 minutes per side to be held remotely by videoconference. 996IPR, Paper 27, 2; 999IPR, Paper 29, 2. Petitioner also requested to present arguments first since it bears the burden of showing unpatentability. *Id.*

Patent Owner requests 60 minutes per side for each of the 996IPR and 999IPR in person at the Texas USPTO Regional Office in Dallas or remote hearing by video. 996IPR, Paper 29, 1; 999IPR, Paper 30, 1.

Since the parties each agree to a video hearing, the hearing shall be conducted by video. Since there is significant overlap between the subject matter of the challenged patents, challenged grounds, and prior art of the 996IPR and 999IPR, we find it will be most efficient to hear the arguments for both cases together in one proceeding, and that 90 minutes of argument time per side should be sufficient for each party to present their arguments. *See* 996IPR, Paper 1, 3; 999IPR, Paper 1, 3.

Accordingly, oral hearing will be held as follows.

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*A. Time and Format*

Oral arguments will commence at **1PM Eastern Time on September 11, 2023, by VIDEO.**<sup>2</sup> 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 90 minutes to present argument for the 996IPR and 999IPR cases and Patent Owner will have a total of 90 minutes to respond. 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 argument. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. In accordance with the Consolidated Trial Practice Guide<sup>3</sup> (“CTPG”), issued in November 2019, Patent Owner may request to reserve time for a brief sur-rebuttal. *See* CTPG 83.

The parties may request a pre-hearing conference in advance of the hearing. *See id.* at 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](mailto:Trials@uspto.gov) at least seven (7) business days before the hearing date to request a conference call for that purpose.

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<sup>2</sup> If there are any concerns about disclosing confidential information, the parties must contact the Board at [Trials@uspto.gov](mailto:Trials@uspto.gov) at least ten (10) business days before the hearing date.

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

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### *B. Demonstratives*

Demonstratives shall be served on opposing counsel at least seven (7) business days before the hearing date and filed no later than three (3) days before the hearing.<sup>4</sup>

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. Acceleron, 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"

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<sup>4</sup> The parties may stipulate to an alternative schedule for serving and filing demonstratives, and request that the Board modify the schedule for filing and serving demonstratives at least seven (7) business days before the hearing date.

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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.<sup>5</sup> 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.

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

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