

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., and APPLE INC.,
Petitioner,

v.

SMART MOBILE TECHNOLOGIES LLC,
Patent Owner.

IPR2022-01248 (Patent 8,842,653 B1)
IPR2022-01249 (Patent 9,019,946 B1)¹

Before HYUN J. JUNG, GARTH D. BAER, and AARON W. MOORE,
Administrative Patent Judges.

JUNG, *Administrative Patent Judge.*

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

¹ The parties are not authorized to use this caption in any subsequent filings.

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I. ORAL ARGUMENT

We instituted *inter partes* review in each of the above-identified proceedings. Paper 13.² The Scheduling Order for these proceedings sets the date for oral argument as October 24, 2023, if requested by the parties and granted by the Board. Paper 14, 11. The parties requested oral argument. Papers 40, 41. The parties' requests for oral argument are *granted*.

A. Time and Format

Oral arguments will commence at 1:00 PM Eastern Time on October 24, 2023, by video.³ There will be a separate hearing for each of the two proceedings captioned above. First, the parties will present oral arguments for IPR2022-01248. Then, the parties will present oral arguments for IPR2022-01249. The Board will provide a court reporter, and the reporter's transcript will constitute the official record of the hearings.

For each hearing, Petitioner will have a total of sixty (60) minutes to present arguments and Patent Owner will have a total of sixty (60) minutes to respond. Petitioner will open each 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 Guide⁴

² We cite to the record in IPR2022-01248, unless otherwise noted.

³ 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.

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

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(“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 hearings. *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 oral hearing, and to seek the Board’s guidance as to particular issues that the panel would like addressed by the parties.” *Id.* To request a pre-hearing conference, the parties should jointly contact the Board at Trials@uspto.gov by October 16, 2023. The request should include several dates and times of availability that are generally no later than three (3) business days prior to the oral hearings.

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 one (1) business day before the hearing.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. 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

⁵ The parties may stipulate to an alternative schedule for serving and filing demonstratives.

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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” 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

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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 hearings 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 that counsel is present by video.

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 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 hearings will be conducted telephonically.

If one or both parties would prefer to participate in the hearings telephonically, they must contact the Board at PTABHearings@uspto.gov at

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

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