

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE LLC,  
Petitioner,

v.

WAG ACQUISITION, L.L.C.,  
Patent Owner.

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IPR2022-01412 (Patent 9,742,824 B2)  
IPR2022-01413 (Patent 9,762,636 B2)<sup>1</sup>

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Before HUBERT C. LORIN, JOHN A. HUDALLA, and  
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

LORIN, Administrative Patent Judge.

ORDER  
Granting Requests for Oral Argument  
*37 C.F.R. § 42.70*

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<sup>1</sup> We exercise our discretion to issue one Order to be filed in each proceeding. The proceedings have not been consolidated, and the parties are not permitted to use this caption.

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## I. ORAL ARGUMENT

We instituted trial in each of the above-identified proceedings on March 23, 2023. IPR2022-01412, Paper 8; IPR2022-01413, Paper 7.

Petitioner (Google LLC) and Patent Owner (WAG Acquisition, L.L.C.) have requested oral argument pursuant to 37 C.F.R. § 42.70(a). IPR2022-01412, Papers 18 and 19; IPR2022-01413, Papers 17 and 18.

Petitioner and Patent Owner have requested in-person hearings. IPR2022-01412 (Papers 18, 1 and 19, 1), IPR2022-01413 (Papers 17, 1 and 18, 1).

Petitioner requested “30 minutes of argument time [for each proceeding], for a total of 1 hour for the session.” IPR2022-01412 (Papers 18, 1), IPR2022-01413 (Paper 17, 1). Patent Owner did not request a specific argument time.

Upon consideration, the requests for oral argument are *granted* subject to the conditions set forth in this Order.

### A. *Time and Format*

Oral arguments for IPR2022-01412 and IPR2022-01413 will be consolidated, and the consolidated oral argument will commence at **10:00 AM Eastern Time on January 4, 2024, at the USPTO headquarters in Alexandria, Virginia.**<sup>2</sup>

The Board will provide a court reporter for the hearings, and the reporter’s transcript will constitute the official record of the hearings. The hearings will be governed by the guidelines below.

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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.

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Regarding the consolidated oral argument for IPR2022-01412 and IPR2022-01413, Petitioner will have **a total of sixty (60) minutes** to present its arguments, and Patent Owner will have **a total of sixty (60) minutes** to respond. The 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. Petitioner's rebuttal must be limited in scope to the issues Patent Owner raises during its presentation, and Patent Owner's sur-rebuttal must be limited in scope to the issues Petitioner raises during its rebuttal. In addition, no new evidence or arguments may be presented at the hearing.

The parties may request a pre-hearing conference in advance of the hearing. *See* CTPG 82; *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019). "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." CTPG 82. Requests must be made by December 7, 2023. *See* Scheduling Orders<sup>4</sup> (DUE DATE 6). If either party desires a pre-hearing conference, the parties should jointly contact the Board

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

<sup>4</sup> The same Scheduling Order was entered in both proceedings. IPR2022-01412 (Paper 9); IPR2022-01413 (Paper 8).

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

*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 with the Board no later than December 28, 2023.<sup>5</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 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

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<sup>5</sup> The parties may stipulate to an alternative schedule for serving demonstratives, and request that the Board modify the schedule for filing demonstratives at least seven (7) business days before the hearing date.

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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 December 29, 2024. 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>6</sup> Any objection to demonstratives that is not timely presented will be considered waived.

*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 at the hearing.

Presenting counsel may use a computer and presentation software to permit the electronic presentation of demonstrative exhibits or use a

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

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