

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VERANCE CORP.,
Petitioner,

v.

MZ AUDIO SCIENCES, LLC,
Patent Owner.

IPR2022-01544
Patent 7,289,961 B2

Before KARL D. EASTHOM and IFTIKHAR AHMED, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

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

ORAL ARGUMENT

Petitioner requests an oral argument pursuant to 37 C.F.R. § 42.70(a) via remote video conference. Paper 31. Patent Owner also requests an oral

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argument via remote video conference. Paper 30. In accordance with the terms set forth in this Order, we *grant* the request for an oral argument via remote video conference.

Time and Format

Oral arguments will commence at 10:00 AM EST on January 25, 2024, by video conference. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.¹

Each party will have a total of forty-five (45) minutes to present arguments at the hearing. *See* Paper 30, 1 (proposing same); Paper 31, 1 (requesting Board to exercise discretion in setting length of argument time). 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 Guide² ("CTPG"), issued in November 2019, Patent Owner may request to reserve time for a brief sur-rebuttal. *See* CTPG 83.

Rebuttal and sur-rebuttal must be responsive to arguments by the opposing party in its immediately preceding presentation. In addition, the parties may only rely upon evidence and present arguments already of record

¹ 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.

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

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in this proceeding, and may not present new arguments or evidence at the hearing.

The parties may request a pre-hearing conference in advance of the hearing. *See* 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.

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. Demonstratives shall be filed with the Board no later than three (3) business days before the hearing.³

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,

³ The parties may stipulate to an alternative schedule for serving demonstratives. The parties may not alter the time for filing demonstratives with the Board.

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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.

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

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objections.⁴ 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.

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.

Remote Attendance Requests

Members of the public may request to listen to and/or view this hearing. If resources are available, the Board generally expects to grant such requests. If either party objects to the Board granting such requests, for example, because confidential information may be discussed, the party must notify the Board at PTABHearings@uspto.gov at least ten (10) business days prior to the hearing date as noted above (note 2).

Audio/Visual Equipment Requests

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

⁴ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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