

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC.,
Petitioner,

v.

CONSTELLATION DESIGNS, LLC,
Patent Owner.

IPR2023-00319
Patent 10,693,700 B1

Before BRENT M. DOUGAL, MICHAEL T. CYGAN, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

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

I. ORAL ARGUMENT

A. Time and Format¹

Oral argument will commence at **9 AM Mountain Time on April 17, 2024**, at the Denver², Colorado, USPTO Regional Office³. The Board will provide a court reporter for the hearings, and the reporter's transcript will constitute the official record of the hearings.⁴

Each party will have **45 minutes** of argument time. Petitioner will present its case, followed by Patent Owner's response. Petitioner may reserve rebuttal time to respond to Patent Owner's arguments. Patent Owner may request to reserve time for a brief sur-rebuttal. *See Consolidated Trial Practice Guide*⁵ ("CTPG"), issued in November 2019, 83.

If either party desires a pre-hearing conference, the parties should jointly contact the Board at Trials@uspto.gov at least 7 business days before 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

¹ If a party is no longer able to appear in-person for the hearing, the party must contact PTABHearings@uspto.gov as soon as possible.

² After the panel change (Paper 18), the parties were asked if they would like to maintain their request for the hearing in Alexandria, or change to Denver. They indicated a preference for Denver.

³ The U.S. Patent and Trademark Office ("USPTO") is concerned with the health and safety of stakeholders, and continues to follow applicable health guidance. Prior to arriving at any USPTO office, please verify entry requirements at: <https://www.uspto.gov/coronavirus>.

⁴ If there are any concerns about disclosing confidential information, the parties must contact the Board at Trials@uspto.gov at least 10 business days before the hearing.

⁵ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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.*

B. Demonstratives

Demonstratives shall be served on opposing counsel at least 7 business days before the hearing and filed⁶ no later than 3 business days before the hearing.⁷

Demonstratives are not evidence and are not a mechanism for making new arguments. Rather, demonstratives are visual aids to a party’s oral presentation regarding arguments and evidence previously discussed in the papers. Accordingly, demonstratives shall include “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer.

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. *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”); *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.

⁶ Demonstratives should be filed as an Exhibit in the USPTO’s electric filing system.

⁷ The parties may stipulate to an alternative schedule for serving demonstratives at least 7 business days before the hearing.

27, 2014) (explaining that “new” evidence includes evidence already of record but not previously discussed in any paper of 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, if 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 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.⁸ 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.

⁸ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

a. Legal Experience and Advancement Program

The Board has established the “Legal Experience and Advancement Program,” or “LEAP,” to encourage advocates with less legal experience to argue before the Board to develop their skills.⁹ The Board defines a LEAP practitioner as a patent agent or attorney having 3 or fewer substantive oral arguments in any federal tribunal, including PTAB.¹⁰

Parties are encouraged to participate in the Board’s LEAP program. Either party may request that a qualifying LEAP practitioner participate in the program and conduct at least a portion of the party’s oral argument. The Board will grant up to 15 minutes of additional argument time to that party. A party should submit the LEAP Practitioner Request for Oral Hearing Participation and Verification Form,¹¹ at least 5 business days before the oral hearing, by email to the Board at PTABHearings@uspto.gov.

Even where an advocate does not meet the LEAP eligibility requirements, but nonetheless considers themselves to be in the category of advocates that this program is intended to assist, the Board encourages argument by such advocates during oral hearings. Though additional argument time will not be provided, a party may share argument time among counsel and the Board will permit the more experienced counsel to provide

⁹ Information about the LEAP program and the combined LEAP Practitioner Request for Oral Hearing Participation and Verification Form can be found at www.uspto.gov/leap.

¹⁰ Whether an argument is “substantive” will be made on a case-by-case basis, considering for example, the amount of time that the practitioner argued, the circumstances of the argument, and whether the argument concerned the merits or ancillary issues.

¹¹ Available at www.uspto.gov/leap.

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