

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

GOTV STREAMING, LLC,
Patent Owner.

IPR2023-00757 (Patent 8,989,715 B2)
IPR2023-00758 (Patent 8,478,245 B2)
IPR2023-00759 (Patent 8,103,865 B2)¹

Before RICHARD M. LEBOVITZ, BRIAN J. McNAMARA, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

PER CURIAM.

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

¹ This combined caption is for administrative convenience only and does not indicate that IPR2023-00757, IPR2023-00758, and IPR2023-00759 have been joined. The parties are not authorized to use this caption without express permission from the Board.

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I. INTRODUCTION

The Scheduling Orders for these proceedings provide that an oral argument would be conducted if requested by either party and granted by the Board. Paper 12, 10.² Under 37 C.F.R. § 42.70, each party requested an oral argument in each proceeding. Paper 28 (Patent Owner's request); Paper 29 (Petitioner's request). Specifically, each party requested (1) a consolidated oral argument for IPR2023-00757 and IPR2023-00758 with each side allotted 45 minutes of argument time for both proceedings (90 minutes total) and (2) an oral argument for IPR2023-00759 with each side allotted 45 minutes of argument time for the proceeding (90 minutes total). Paper 28, 2; Paper 29, 1–2.

Patent Owner requested that the arguments be held virtually by videoconference. Paper 28, 2. Petitioner requested the arguments be held in person. Paper 29, 1. The Scheduling Orders explain that the Board “will conduct an in-person hearing only when requested by all parties.” Paper 12, 6.

The requests for oral argument are granted subject to the conditions set forth in this Order.

II. ORAL ARGUMENTS

A. Time and Format

Please note the time and format of the oral arguments. The oral arguments will commence at **9:00 AM (Eastern) on Tuesday, August 6,**

² For purposes of expediency, we cite to the order and papers filed in IPR2023-00757. Substantially the same order and papers were filed in IPR2023-00758 and IPR2023-00759.

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2024, by video. The Board will initially hear arguments for IPR2023-00757 and IPR2023-00758 and after a short break hear arguments for IPR2023-00759.

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. The parties are directed to contact the Board at least ten (10) business days before the hearing if there are any concerns about disclosing confidential information.

As requested by each party, each party will have 45 minutes of total argument time for the arguments in IPR2023-00757 and IPR2023-00758 and 45 minutes of total argument time for the arguments in IPR2023-00759.
Paper 28, 2; Paper 29, 2.

Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in the proceeding are unpatentable by a preponderance of the evidence. 35 U.S.C. § 316(e) (2018). Hence, Petitioner will start each oral argument by presenting its case regarding the challenged claims. After Petitioner's presentation, Patent Owner will respond to Petitioner's arguments and present the issues for which it bears the ultimate burden. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. Likewise, Patent Owner may reserve sur-rebuttal time; however, Patent Owner's sur-rebuttal must be limited in scope to the issues Petitioner raises during its rebuttal. The parties may also address any pending motions during their respective presentations.

According to the PTAB Consolidated Trial Practice Guide ("CTPG") and the Scheduling Orders for these proceedings, either party may request a

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prehearing conference. CTPG at 82;³ Paper 12, 10. “The purpose of the prehearing 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.” CTPG at 82.

Requests for a prehearing conference must be made by July 23, 2024. Paper 12, 11. To request a prehearing conference, an email should be sent to Trials@uspto.gov including several dates and times of availability for one or both parties, as appropriate, that are generally no later than three (3) business days before the hearing. Please refer to the Consolidated Trial Practice Guide for more information about a prehearing conference. *See* CTPG § II.M.

B. Demonstrative Exhibits

Under 37 C.F.R. § 42.70(b), the parties must serve their respective demonstrative exhibits on opposing counsel at least seven (7) business days before the hearing.⁴ Also, the parties must file their respective demonstrative exhibits with the Board at least three (3) business days before the hearing.

Demonstrative exhibits used at the hearing are visual aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide of a demonstrative exhibit may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer.

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

⁴ The parties may stipulate to an alternative schedule for serving their respective demonstrative exhibits that is no later than three (3) business days before the hearing.

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Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Acclerolon, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the “Board was obligated to dismiss [a party’s] untimely argument . . . raised for the first time during oral argument”). “[N]o new evidence may be presented at the oral argument.” CTPG at 85. Accordingly, each demonstrative must include a citation to the page number(s) of the paper(s) where the argument or evidence that is the subject of the demonstrative was advanced by a party.

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014), regarding the appropriate content of demonstrative exhibits.

Due to the nature of the Board’s consideration of demonstrative exhibits and the opportunity afforded for the parties to reach an agreement without involving the Board, the Board does not anticipate that objections to demonstrative exhibits are likely to be sustained. Nevertheless, to the extent that a party objects to the propriety of any demonstrative exhibit, the parties must meet and confer in good faith to resolve any objections. If such objections cannot be resolved, the parties may jointly file any objections to demonstrative exhibits with the Board at least three (3) business days before the hearing. The objections must identify with particularity which portions of the demonstrative exhibits are subject to objection 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 schedule a conference call if deemed necessary. Otherwise, the Board will

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