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571-272-7822

Paper 20
Date: May 22, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIGHTRICKS LTD.,
Petitioner,

v.

PLOTAGRAPH, INC. and SASCHA CONNELLY,
Patent Owner.

IPR2023-00153 (Patent 10,346,017 B2)
IPR2023-00154 (Patent 10,621,469 B2)
IPR2023-00568 (Patent 11,182,641 B2)[1]

Before PATRICK R. SCANLON, CHARLES J. BOUDREAU, and IFTIKHAR AHMED, *Administrative Patent Judges*.

AHMED, *Administrative Patent Judge*.

ORDER
Granting the Petitioner's Request for Oral Argument
37 C.F.R. § 42.70

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[1] This Order addresses issues that are the same in all three cases. We therefore exercise our discretion to issue one Order to be filed in each case. The parties may not use this style heading for any subsequent papers without authorization.

I. ORAL ARGUMENT

Time and Format

Petitioner in the above-captioned proceedings filed a request for oral argument, pursuant to 37 C.F.R. § 42.70(a). *See* IPR2023-00153, Paper 19; IPR2023-00154, Paper 19; IPR2023-00568, Paper 17. Petitioner requests that a single hearing be held for all three proceedings. *See, e.g.*, IPR2023-00153, Paper 19 at 1. We agree with Petitioner and *grant* Petitioner's request for oral argument according to the terms set forth in this Order.

The combined oral argument in IPR2023-00153, IPR2023-00154, and IPR2023-00581 will commence at **1:00 PM Eastern Time** on **July 2, 2024**, **by video**.[2] The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

As requested by Petitioner, *see, e.g.*, IPR2023-00153, Paper 19 at 1, each party will have **60 minutes** of total time to present arguments across all three proceedings. Petitioner will proceed first to present its case with regard to the challenged claims and grounds set forth in each case. Petitioner may reserve time for rebuttal. Thereafter, Patent Owner may respond to Petitioner's argument and may reserve time for sur-rebuttal. Petitioner may then present its rebuttal followed by Patent Owner's sur-rebuttal. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), at 83 ("CTPG").[3]

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[2] At this time, if either party requests a virtual hearing by video conference, the hearing will be conducted virtually for all parties. In this case, Petitioner requests a virtual hearing. *See, e.g.*, IPR2023-00153, Paper 19 at 1. The hearing will therefore be conducted virtually by video conference.

[3] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.

The parties are reminded that arguments made in rebuttal and sur-rebuttal must be responsive to arguments the opposing party made in its immediately preceding presentation. Additionally, the parties may only rely upon evidence that has been previously submitted in the proceeding and may only present arguments that have been previously made in the submitted papers. No new evidence or arguments may be presented at the hearing. Live testimony will not be permitted.

Pre-Hearing Conference

Either party may request a pre-hearing conference. *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 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 **June 18, 2024**. To request such a conference, the parties should jointly contact the Board at Trials@uspto.gov and include several dates and times of availability that are generally no later than **three (3) business days** prior to the hearing.

Demonstrative Exhibits

At least **six (6) business days** prior to the hearing, each party shall serve on the other party any demonstrative exhibit(s) it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). At least **four (4) business days** prior to the hearing, the parties shall file any demonstrative exhibits in this case.

Demonstratives are not a mechanism for making new arguments. Demonstrative exhibits used at the hearing are not evidence, nor will they 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 85; *see also St. Jude Med., Cardiology Div., Inc. v. Bd. of Regents of the Univ. of Mich.*, IPR2013-00041, Paper 65 at 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 the record, which allows the Board to easily ascertain whether a given demonstrative contains "new" argument or evidence.

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 Board expects the parties will meet and confer in good faith to resolve any objections prior to raising the objections with the Board. For any objection to a demonstrative that cannot be resolved after conferring with the opposing party, the parties may email jointly to Trials@uspto.gov a one-page list of objections at least

four (4) business days prior to the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one short sentence) 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 until at or after the hearing.[4] Any objection to demonstratives that is not timely presented will be considered waived.

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. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than **three (3) business days** prior to the oral hearing to discuss the matter.

Conducting the Hearing by Video or Telephone

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 hearing will be conducted telephonically.

[4] If time permits, the Board may schedule a conference call with the parties to discuss any objections raised prior to the hearing.

If one or both parties would prefer to participate in the hearing telephonically, they must contact the Board at PTABHearings@uspto.gov at least **five (5) business days** prior to the hearing date to receive dial-in connection information.

Counsel should unmute only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. During the hearing, the parties are reminded to identify clearly and specifically each paper referenced (e.g., by slide or screen number for a demonstrative) to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically. In addition, the parties are advised to identify themselves each time they speak. Furthermore, the remote nature of the hearing may also result in an audio lag, and thus the parties are advised to observe a pause prior to speaking, so as to avoid speaking over others.

During the hearing, if counsel encounters technical or other difficulties that fundamentally undermine counsel's ability to adequately represent its client, please let the panel know immediately, and adjustments will be made.[5]

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

[5] For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

notify the Board at PTABHearings@uspto.gov at least **ten (10) business days** prior to the hearing date.

Audio and 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 visual or hearing impairments, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication at least **five (5) business days** before the hearing date.

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. The Board defines a LEAP practitioner as a patent agent or attorney having three (3) or fewer substantive oral arguments in any federal tribunal, including the PTAB.[6]

The 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 fifteen (15) minutes of additional argument time to that party, depending on the length of the proceeding and

[6] Whether an argument is "substantive" for purposes of determining whether an advocate qualifies as a LEAP practitioner will be made on a case-by-case basis with considerations to include, 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.

the PTAB's hearing schedule. A party should submit a request no later than at least **five (5) business days** before the hearing, by email to the Board at PTABHearings@uspto.gov.[7]

The LEAP practitioner may conduct the entire oral argument or may share time with other counsel, provided that the LEAP practitioner is offered a meaningful and substantive opportunity to argue before the Board. The party has the discretion as to the type and quantity of oral argument that will be conducted by the LEAP practitioner.[8] Moreover, whether the LEAP practitioner conducts the argument in whole or in part, the Board will permit more experienced counsel to provide some assistance to the LEAP practitioner, if necessary, during oral argument, and to clarify any statements on the record before the conclusion of the oral argument. Importantly, the Board does not draw any inference about the importance of a particular issue or issues, or the merits of the party's arguments regarding the issue(s), from a party's decision to have (or not to have) a LEAP practitioner argue.

In instances where an advocate does not meet the LEAP eligibility requirements due to the number of "substantive" oral hearing arguments, but nonetheless has a basis for considering themselves to be in the category of advocates that this program is intended to assist, the Board encourages

[7] Additionally, a LEAP Verification Form shall be submitted by the LEAP practitioner, confirming eligibility for the program. A combined LEAP Practitioner Request for Oral Hearing Participation and Verification Form is available on the LEAP website, www.uspto.gov/leap.

[8] Examples of the issues that a LEAP practitioner may argue include claim construction argument(s), motion(s) to exclude evidence, or patentability argument(s) including, e.g., analysis of prior art or objective indicia of non-obviousness.

argument by such advocates during oral hearings. Even though additional argument time will not be provided in such circumstances, as with the LEAP, a party may share argument time among counsel and the Board will permit more experienced counsel to provide some assistance, if necessary, during oral argument, and to clarify any statements on the record before the conclusion of the oral argument.

All practitioners appearing before the Board shall demonstrate the highest professional standards. All practitioners are expected to have a command of the factual record, the applicable law, and Board procedures, as well as the authority to commit the party they represent.

ORDER

Accordingly, it is

ORDERED that oral argument for the above-captioned proceedings shall commence at **1:00 PM Eastern Time** on **July 2, 2024**, **by video**, and shall proceed in the manner set forth herein.

IPR2023-00153 (Patent 10,346,017 B2)
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