Trials@uspto.gov
571-272-7822

Paper 30
Entered: February 7, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and GOOGLE LLC,
Petitioner,

v.

SPACETIME3D, INC.,
Patent Owner.

IPR2023-00242 (Patent 8,881,048 B2)
IPR2023-00343 (Patent 9,304,654 B2)
IPR2023-00344 (Patent 9,696,868 B2)[1]

Before HUBERT C. LORIN, DAVID C. McKONE, and SHEILA F. McSHANE, *Administrative Patent Judges.*

LORIN, Administrative Patent Judge.

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

[1] This Order applies to all three proceedings. The parties, however, are not authorized to use this style heading for any subsequent papers.

I. ORAL ARGUMENT

We instituted trial in each of the above-identified proceedings with respect to Apple Inc. (Petitioner) and Spacetime3D, Inc. (Patent Owner) on June 16 and July 6 and 17, 2023, respectively. *See* Paper 11 in IPR2023-00242, -00343 and -00344.

Google LLC filed motions for joinder in IPR2023-00577, -00579 and -00578, to be joined as Petitioner to IPR2023-000242, -00343 and -00344, respectively. Google LLC represented that it will

> 1. Adhere to all applicable deadlines in the Apple IPR;
> . . .
> 4. Refrain from requesting or reserving additional oral hearing time; and
> 5. Assume a second-chair role as long as Apple remains in the Proceeding.

IPR2023-00577 (Paper 2, 6), -00579 (Paper 1, 6), and -00578 (Paper 1, 6). The Board granted the motions for joinder and Google LLC was joined as Petitioner to IPR2023-000242, -00343 and -00344. *See* Paper 14 in IPR2023-00242, -00343 and -00344. We instituted trial in each of the above-identified proceedings with respect to Google LLC (Petitioner) and Spacetime3D (Patent Owner) on August 7, 2023. *Id*.

Apple Inc. and Spacetime3D, Inc. have requested oral argument pursuant to 37 C.F.R. § 42.70(a). IPR2023-00242 (Papers 31, 30), -00343 (Papers 29, 28) and -00344 (Papers 29, 28).

Apple Inc. and Spacetime3D, Inc. have requested in-person hearings. IPR2023-00242 (Papers 31, 1 and 30, 1), -00343 (Papers 29, 1 and 28, 1) and -00344 (Papers 29, 1 and 28, 1).

For IPR2023-00242, Apple Inc. and Spacetime3D, Inc. have requested one hour total of oral argument time per side for a total of 120 minutes of oral argument time. IPR2023-00242 (Papers 31, 1 and 30, 1).

For IPR2023-00343 and -00344, Apple Inc. and Spacetime3D, Inc. have requested that the hearings in these two cases be consolidated and one hour total of oral argument time per side for a total of 120 minutes of oral argument time for the consolidated hearing. IPR2023-00343 (Papers 29, 1 and 28, 1) and -00344 (Papers 29, 1 and 28, 1).

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 IPR2023-00242 will commence at **1:00 PM Eastern Time on March 18, 2024, at the USPTO headquarters in Alexandria, Virginia.**[2] Oral arguments for IPR2023-00343 and IPR2023-0344 will be consolidated, and the consolidated oral argument will commence at the conclusion of oral arguments for IPR2023-00242.

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.

For the oral arguments for IPR2023-00242, Apple Inc. will have **a total of sixty (60) minutes** to present its arguments, and Spacetime3D, Inc., will have **a total of sixty (60) minutes** to respond. For the consolidated oral arguments for IPR2023-00343 and -00344, Apple Inc. will have **a total of**

[2] 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.

sixty (60) minutes to present its arguments, and Spacetime3D, Inc., will have **a total of sixty (60) minutes** to respond.

For each of the oral arguments for IPR2023-00242 and the consolidated oral arguments for IPR2023-00343 and -00344, Apple Inc. will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. Thereafter, Spacetime3D, Inc. will respond to Apple Inc.'s argument. Apple Inc. may reserve rebuttal time to respond to arguments presented by Spacetime3D, Inc. In accordance with the Consolidated Trial Practice Guide[3] ("CTPG"), issued in November 2019, Spacetime3D, Inc. may request to reserve time for a brief sur-rebuttal. *See* CTPG 83. Apple Inc.'s rebuttal must be limited in scope to the issues Spacetime3D, Inc. raises during its presentation, and Spacetime3D, Inc.'s sur-rebuttal must be limited in scope to the issues Apple Inc. 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 March 1, 2024. *See* Scheduling Orders[4] (DUE DATE 6). If either party desires a pre-hearing conference, the parties should jointly contact the Board at

[3] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.
[4] The same Scheduling Order was entered in all three proceedings. *See* Paper 12 in IPR2023-00242, -00343 and -00344.

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 Wednesday, March 13, 2024.[5]

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 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

[5] 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.

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 Thursday, March 14, 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.[6] 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.

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

As requested by Apple Inc., counsel may use "audio visual equipment to display demonstrative exhibits, including the use of a projector and screen that connects to a laptop computer ['a laptop computer with a HDMI-type connector']," and, as requested by Spacetime3D, Inc., counsel may use "audio/visual equipment to display demonstrative exhibits, including the projector and screens in the hearing room to project PowerPoint slides or other electronic materials." *See* IPR2023-00242 (Papers 31, 1 and 30, 2), -00343 (Papers 29, 1–2 and 28, 2) and -00344 (Papers 29, 1–2 and 28, 2).

D. 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.

E. Special Requests

A party may indicate any special requests related to appearing at an in-person hearing, such as a request to accommodate deaf or hard-of-hearing individuals and blind or low-vision individuals, 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. Any special requests[7] for audio-visual equipment should be directed to PTABHearings@uspto.gov.

F. 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 PTAB.[8]

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 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.[9]

---

[7] This would include Apple Inc.'s request that "an ELMO-type projector be made available for use." *See* IPR2023-00242 (Paper 31, 1), -00343 (Paper 29, 2) and -00344 (Paper 29, 2).

[8] 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.

[9] 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.

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.[10] 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 that issue, from the 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 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 argument by such advocates during oral hearings. Even though additional argument time will not be provided when the advocate does not qualify for LEAP, a party may share argument time among counsel and the Board will permit the 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.

[10] 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., analyses of prior art or objective indicia of non-obviousness.

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.

II. ORDER

Accordingly, it is

ORDERED oral arguments for IPR2023-00242 will commence at **1:00 PM Eastern Time on March 18, 2024, at the USPTO headquarters in Alexandria, Virginia**, and proceed in the manner set forth herein;

FURTHER ORDERED oral arguments for IPR2023-00343 and IPR2023-0344 will be consolidated, and the consolidated oral arguments will commence at the conclusion of oral arguments for IPR2023-00242, and proceed in the manner set forth herein; and

FURTHER ORDERED that the parties should note that arguments made at the consolidated oral hearing shall have application only in the record of the proceeding(s) which supports the argument.

IPR2023-00242 (Patent 8,881,048 B2)
IPR2023-00343 (Patent 9,304,654 B2)
IPR2023-00344 (Patent 9,696,868 B2)

FOR PETITIONER:

W. Karl Renner
Axf-ptab@fr.com

Andrew Patrick
patrick@fr.com

Kenneth Darby
kdarby@fr.com

Usman Khan
khan@fr.com

FOR PATENT OWNER:

Todd Fitzsimmons
todd@fitziplaw.com

Gregory Cordrey
gcordrey@jmbm.com