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Paper 21
Date: March 13, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KEYSIGHT TECHNOLOGIES, INC.,
Petitioner,

v.

CENTRIPETAL NETWORKS, LLC,
Patent Owner.

IPR2023-00448
Patent 11,012,474 B2

Before KEVIN F. TURNER, AARON W. MOORE, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

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

I. INTRODUCTION

The Scheduling Order for this proceeding provides that an oral argument would be conducted if requested by either party and granted by the Board. Paper 8, 10. Under 37 C.F.R. § 42.70, each party requested an oral argument. Paper 19 (Patent Owner's request); Paper 20 (Petitioner's request). Specifically, Patent Owner requested a 45-minute in-person hearing, and Petitioner requested a 45-minute video hearing. Paper 19, 1; Paper 20, 1. The Scheduling Order explains that the Board "will conduct an in-person hearing only when requested by all parties." Paper 8, 6.

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

A. Time and Format

Please note the time and format of the oral argument. The oral argument will commence at **1:00 PM (Eastern) on Monday, April 22, 2024, by video**. 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 at the hearing. Paper 19, 1; Paper 20, 1.

Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in this proceeding are unpatentable by a preponderance of the evidence. 35 U.S.C. § 316(e) (2018). Hence, Petitioner will open the hearing 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 Order for this proceeding, either party may request a pre-hearing conference. CTPG at 82;[1] Paper 8, 10. "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 at 82.

Requests for a pre-hearing conference must be made by April 8, 2024. Paper 8, 11. To request a pre-hearing 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 pre-hearing 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

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

before the hearing.[2] 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. Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Acceleron, 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

[2] 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.

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 reserve ruling on the objections. Any objection to a demonstrative exhibit that is not timely presented will be considered waived.

During the hearing, a presenter must identify clearly and specifically each item referenced (e.g., by slide number for a demonstrative exhibit) to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically. A presenter may use video-conferencing or other presentation software to permit the presentation of demonstrative exhibits by video.

C. Presenting Counsel

The Board generally expects lead counsel for each party to be present by video at the hearing. CTPG at 11. But any counsel of record may present a party's argument, in whole or in part, as long as that counsel is present by video.

D. Video Hearing Details

To facilitate planning, each party must contact PTAB Hearings at PTABHearings@uspto.gov at least five (5) business days before the hearing 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.

If one or both parties would prefer to participate in the hearing telephonically, they must contact PTAB Hearings at the above email address at least five (5) business days before the hearing to receive dial-in connection information.

Counsel should unmute only when speaking. The panel will have access to all papers filed with the Board as well as demonstrative exhibits submitted according to the above instructions. As noted above, the Board requests identification for all papers and exhibits discussed during the hearing in the interest of providing a clear record. In addition, the parties are requested to identify themselves each time they speak. Further, the remote nature of the hearing may also result in some transmission lag. Accordingly, counsel should observe a pause prior to speaking, so as to avoid speaking over others.

If at any time during the hearing, you encounter technical or other difficulties that fundamentally undermine your ability to adequately represent your client, please let the panel know immediately, and adjustments will be made. For example, if a party experiences poor video quality, the Board may provide alternate dial-in information. The Board contemplates adjusting argument time to account for technical or other difficulties.

E. Remote Attendance Requests

Members of the public may request to listen to 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 by contacting PTABHearings@uspto.gov at least ten (10) business days before the hearing.

F. 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 hearing by video, such as a request to accommodate visual or hearing impairments, and indicate how the Board may accommodate any special requests. Any special requests must be presented in a separate communication at least five (5) business days before the hearing.

G. 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 Board.[3]

[3] 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 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 Board's hearing schedule. A party should submit a request, no later than five (5) business days before the oral argument, by email to the Board at PTABHearings@uspto.gov.[4]

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.[5] 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 an issue, from the party's decision to have (or not to have) a LEAP practitioner argue.

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[4] 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.

[5] 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 nonobviousness.

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.

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 that Petitioner's and Patent Owner's requests for oral argument are granted subject to the conditions set forth in this Order; and

FURTHER ORDERED that the oral argument for this proceeding will commence at **1:00 PM (Eastern) on Monday, April 22, 2024, by video**, and proceed in the manner set forth herein.

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