

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIEMENS MOBILITY, INC.,
GROUND TRANSPORTATION SYSTEMS USA INC.,
HUMATICS CORP., and PIPER NETWORKS, INC.,
Petitioner,

v.

METROM RAIL, LLC,
Patent Owner.

IPR2023-00468 (Patent 9,043,131 B2)
IPR2023-00470 (Patent 8,812,227 B2)

Before JAMES P. CALVE, HYUN J. JUNG, and NEIL T. POWELL,
Administrative Patent Judges.

CALVE, *Administrative Patent Judge.*

ORDER¹
Setting Oral Argument
37 C.F.R. § 42.70

¹ This Order addresses issues that are the same in each of the above-identified proceedings, so we issue one Order to be entered in each proceeding. The parties are not authorized to use this style heading.

I. ORAL ARGUMENT

We instituted *inter partes* review in the above-referenced proceedings on June 23, 2023. IPR2023-00468, Paper 10; IPR2023-00470, Paper 11. We issued a Scheduling Order setting oral argument on March 22, 2024. IPR2023-00468, Paper 11, 11; IPR2023-00470, Paper 12, 11. Both parties request oral argument. IPR2023-00468, Papers 50, 51; IPR2023-00470, Papers 51, 52. Both parties request a combined hearing and sixty minutes per side to argue their positions in a combined hearing. IPR2023-00468, Paper 50, 3; Paper 51, 2; IPR2023-00470, Paper 51, 3; Paper 52, 2.

Both parties request an in person hearing in Alexandria, Virginia, with audio visual equipment to display demonstratives and exhibits. IPR2023-00468, Paper 50, 2–3; Paper 51, 2; IPR2023-00470, Paper 51, 2–3; Paper 52, 2. Upon considering the parties’ requests, we order that oral argument be held in person in Alexandria, Virginia.

A. Time and Format

Oral argument will commence at 1:00 PM ET on March 22, 2024.² The Board will provide a court reporter for the hearing, and the reporter’s transcript will constitute the official record of the hearing.

Each party will have 60 minutes to present their arguments. Because Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable, Petitioner will open the hearing by presenting its arguments regarding the challenged claims and the instituted grounds of unpatentability in these proceedings. Petitioner also may request to reserve rebuttal time.

² If there are any concerns about disclosing confidential information, the parties must contact the Board at Trials@uspto.gov at least ten business days before the hearing date.

Patent Owner will respond to Petitioner's argument and may request to reserve sur-rebuttal time. Petitioner may respond to arguments presented by Patent Owner if Petitioner reserves rebuttal time. Patent Owner may present sur-rebuttal argument if Patent Owner reserves sur-rebuttal time.³

The parties may request a pre-hearing conference. CTPG 82. "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." *Id.* If either party seeks a pre-hearing conference, the parties should contact the Board jointly at Trials@uspto.gov at least seven business days before the hearing date to request a conference call.

B. Demonstratives

Demonstratives shall be served on opposing counsel at least seven business days before the hearing date and shall be filed no later than three business days before the hearing. *See* 37 C.F.R. § 42.70(b). A copy of the demonstratives also should be sent by email to PTABHearings@uspto.gov. Demonstratives are not a mechanism for making new arguments. Demonstratives are not evidence and will not be relied upon as evidence. 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 marked clearly with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting the Board is obligated under its regulations to dismiss untimely argument

³ *See* Consolidated Trial Practice Guide ("CTPG"), issued November 2019, 83 (available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>).

“raised for the first time during oral argument”). “[N]o new evidence may be presented at the oral argument.” CTPG 86; *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).

Because of the strict prohibition against the presentation of new evidence or arguments at a hearing, it is strongly recommended that each demonstrative cite a paper in the record to allow the Board to ascertain whether a given demonstrative contains “new” argument or evidence or, instead, contains only that which is developed in the existing record.

To the extent 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 one day prior to 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.⁴ Any objection to demonstratives that is not timely presented will be considered waived.

⁴ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

C. Presenting Counsel

The Board generally expects lead counsel for each party to be present at the hearing. CTPG 11. Any counsel of record may present the party's argument as long as that counsel is present.

D. Public 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. 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 or fewer substantive oral arguments in any federal tribunal, including PTAB.⁵

The parties are encouraged to participate in the 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 minutes of additional argument time to that party, depending on the length of the proceedings and the PTAB's hearing

⁵ 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.

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schedule. A party should submit a request, no later than at least five business days before the oral hearing, by email to the Board at PTABHearings@uspto.gov.⁶

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.⁷ Moreover, whether the LEAP practitioner conducts the argument in whole or in part, the Board will permit more experienced counsel to provide 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. 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 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 argument by such advocates during oral hearings. Even though additional

⁶ 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.

⁷ Examples of the issues that a LEAP practitioner may argue include claim construction argument(s), motion(s) to exclude evidence, or patentability arguments, e.g., analyses of prior art or objective indicia of non-obviousness.

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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 may, at its discretion, 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 that they represent.

II. ORDER

Accordingly, it is

ORDERED that oral argument for these proceedings shall commence at 1:00 PM ET on March 22, 2024, at Alexandria, Virginia, and proceed in the manner set forth herein.

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