Trials@uspto.gov
Tel: 571-272-7822

Paper: 56
Date: September 18, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAZOOKA-FARMSTAR, LLC,
Petitioner,

v.

NUHN INDUSTRIES LTD.,
Patent Owner.

IPR2023-01161
Patent 11,358,425 B1

Before MEREDITH C. PETRAVICK, MATTHEW S. MEYERS, and BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

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

I. ORAL ARGUMENT

A. Time and Format

Oral argument will commence at **10 AM Mountain Time** on **October 11, 2024** by Video. A Board provided court reporter will transcribe the hearing.[1]

Each party will have **75 minutes**. Petitioner will present its case, followed by Patent Owner. Petitioner and Patent Owner may both reserve rebuttal time. *See* Consolidated Trial Practice Guide[2] ("CTPG"), issued in November 2019, 83.

If either party desires a pre-hearing conference, the parties should jointly contact the Board at Trials@uspto.gov at least 7 business days before the hearing. *See Id.* at 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.*

B. Demonstratives

As set forth in 37 C.F.R. § 42.70(b), demonstratives shall be served on opposing counsel at least 7 business days before the hearing and filed[3] no later than 3 business days before the hearing.[4]

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[1] Hearings are typically open to the public. If there are any concerns about disclosing confidential information, the parties must contact the Board at Trials@uspto.gov at least 10 business days before the hearing.
[2] Available at https://www.uspto.gov/TrialPracticeGuideConsolidated.

[3] Demonstratives should be filed as an Exhibit in the electric filing system.
[4] The parties may stipulate to an alternative schedule for serving demonstratives at least 7 business days before the hearing.

Demonstratives are not evidence and are not a mechanism for making new arguments. Rather, demonstratives are aids to the presentation regarding previously discussed arguments and evidence. Accordingly, demonstratives shall include "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer.

It is recommended that the demonstratives include citations to papers in the record. This allows the Board to easily ascertain whether "new" arguments or evidence is addressed. *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").

If 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 the time of 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. 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.

Parties are encouraged to participate in the Board's LEAP program.[5] 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 15 minutes of additional argument time to that party. A party should submit the LEAP Practitioner Request for Oral Hearing Participation and Verification Form, at least 5 business days before the oral hearing, by email to the Board at PTABHearings@uspto.gov.

D. Video Hearing Details

Each party must contact the Board at PTABHearings@uspto.gov at least 5 business days prior to 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 the Board at PTABHearings@uspto.gov at least 5 business days prior to the hearing to receive dial-in information.

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[5] Information about the LEAP program and the combined LEAP Practitioner Request for Oral Hearing Participation and Verification Form can be found at www.uspto.gov/leap.

If at any time during the hearing, 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.

E. 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 video 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 5 business days before the hearing.

II. ORDER

Accordingly, it is

ORDERED that oral argument will commence at **10 AM Mountain Time** on **October 11, 2024** by Video, and proceed in the manner set forth herein.

FOR PETITIONER:

Thomas Leach
Robert Kalinsky
Jeffrey Blake
Taylor Stemler
MERCHANT & GOULD P.C.
tleach@merchantgould.com
rkalinsky@merchantgould.com
jblake@merchantgould.com
tstemler@merchantgould.com

FOR PATENT OWNER:

James Luchsinger
Matthew Cutler
Scott Yackey
HARNESS, DICKEY, & PIERCE P.L.C.
bluchsinger@hdp.com
mcutler@hdp.com
syackey@hdp.com