

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON USA INC.,
Petitioner,

v.

NIKE INC.,
Patent Owner.

IPR2023-01460
Patent 9,730,484 B2

Before JOSIAH C. COCKS, CARL M. DEFRANCO, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

ORDER
Setting Oral Hearing
37 .F.R. § 42.70

I. ORAL ARGUMENT

A. *Time and Format*

Oral argument will commence at 1:30 PM EDT on December 16, 2024, at USPTO headquarters in Alexandria, VA. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.¹

Each party will have a total of sixty (60) minutes to present its case. Petitioner will open the hearing with its case, followed by Patent Owner's response. Petitioner and Patent Owner may each reserve rebuttal time. *See Consolidated Trial Practice Guide*² ("TPG") at 83 (November 2019).

If either party desires a pre-hearing conference, the parties should jointly contact the Board at Trials@uspto.gov at least seven (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*

Per 37 C.F.R. § 42.70(b), demonstratives must be served on opposing counsel at least seven (7) business days before the hearing and be filed at least three (3) business days before the hearing.³

¹ 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.

² *Available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

³ The parties may stipulate to an alternative schedule for serving demonstratives, but any demonstratives should be filed at least three (3) business days before the hearing.

Demonstratives are not evidence and should not include new arguments. Rather, demonstratives are visual aids to a party's arguments and evidence previously presented and discussed in the papers. Accordingly, demonstratives shall be clearly marked with the words "DEMONSTRATIVE EXHIBIT–NOT EVIDENCE." Furthermore, the Board strongly recommends that demonstratives include citations to a papers in the record. This 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 for the parties to reach agreement without involving the Board, any objections to demonstratives are not likely to be sustained. Nonetheless, if a party objects to the propriety of any demonstrative, the parties shall meet and confer in good faith to resolve any such objections. If such objections cannot be resolved, the parties may file any such objections with the Board no later three (3) days before the hearing. The objections shall identify with particularity which portions of the demonstratives 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 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* TPG 11. Any counsel of record may present the party's argument.

D. Remote Attendance Requests

Members of the public may request to listen to and/or view this hearing. 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 (LEAP)

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 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. A party should submit a LEAP Practitioner Request for Oral Hearing Participation and Verification Form request at least five (5) business days before the oral hearing, by email to the Board at PTABHearings@uspto.gov.⁴

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 the hearing, such as a request to accommodate deaf or hard-of-hearing individuals and blind or low vision individuals, and indicate

⁴ 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.

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.

II. ORDER

Accordingly, it is

ORDERED that oral argument for this proceeding shall commence at 1:30 PM EDT on December 16, 2024, at USPTO headquarters in Alexandria, VA, and proceed in the manner set forth herein.

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