

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZEPP HEALTH CORPORATION,
Petitioner,

v.

SLYDE ANALYTICS, LLC
Patent Owner.

IPR2024-00006
Patent 8,588,033 B2

Before JAMESON LEE, ST. JOHN COURTENAY, III, and
JOHN F. HORVATH, *Administrative Patent Judges*.

COURTENAY, *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 1:00 PM ET on Wednesday, January 15, 2025, by videoconference.¹ The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. We authorize 45 minutes of argument time for each party.

Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in these proceedings are unpatentable by a preponderance of the evidence. 35 U.S.C. § 316(e). Therefore, Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. After Petitioner's presentation, Patent Owner will respond to Petitioner's argument and present the issues for which it bears the ultimate burden. Next, Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. Lastly, 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 time. The parties may also address any pending motions during their respective presentations. No live testimony from any witness will be taken at the hearing.

B. Demonstratives

As set forth in 37 C.F.R. § 42.70(b), demonstratives shall be served on opposing counsel at least five (5) business days before the hearing date. The parties also shall file a copy of any demonstratives as an exhibit in the trial record before the hearing.

¹ If there are any concerns about disclosing confidential information, the parties must contact the Board at Trials@uspto.gov before the hearing date.

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).

The parties are reminded that each presenter should identify clearly and specifically each paper (e.g., by slide or screen number for a demonstrative) referenced during the hearing to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically.

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.

D. Video or Telephonic Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov prior to the hearing date 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 five (5) business days prior to the hearing date to receive dial-in connection information.

Counsel should unmute only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. In addition, the parties are advised to identify themselves each time they speak. Furthermore, the remote nature of the hearing may also result in an audio lag, and thus the parties are advised to observe a pause prior to speaking, so as to avoid speaking over others.

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.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

² For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

notify the Board at PTABHearings@uspto.gov at least ten (10) business days prior to the hearing date.

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 five (5) business days before the hearing date.

II. ORDER

Accordingly, it is

ORDERED that oral argument for this proceeding shall commence at **1:00 PM Eastern Time on Wednesday, January 15, 2025**, by videoconference, and proceed in the manner set forth herein.

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