

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIZIO, INC.,
Petitioner,

v.

POLARIS POWERLED TECHNOLOGIES, LLC,
Patent Owner.

IPR2024-00073
Patent 7,843,148 B2

Before JOHN F. HORVATH, DANIEL J. GALLIGAN, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

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

I. ORAL ARGUMENT

On October 23, 2024, both Petitioner and Patent Owner requested 60 minutes of oral argument in the above captioned proceeding (Paper 24, 2; Paper 25, 1). These requests are *granted* according to the terms set forth in this Order.

*A. Time and Format*¹

Oral arguments will commence at 1:00 PM Eastern Time on December 5, 2024, by video.² The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Petitioner will have a total of sixty (60) minutes to present argument in this case and Patent Owner will have a total of sixty (60) minutes to respond. Petitioner will open the hearing by presenting its case regarding the patentability of the challenged claims and may reserve a portion of its time for rebuttal argument. Thereafter, Patent Owner will respond to Petitioner's argument and may reserve a portion of its time for sur-rebuttal. *See Consolidated Trial Practice Guide*³ ("CTPG"), 83.

The parties may request a pre-hearing conference "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

¹ If a party is no longer able to appear in-person for the hearing, the party must contact PTABHearings@uspto.gov as soon as possible.

² If there are any concerns about disclosing confidential information, the parties must contact the Board at Trials@uspto.gov at least ten (10) business days before the hearing date.

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

parties.” *Id.* at 82. 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 date to request the conference.

B. Demonstratives

Demonstratives shall be served on opposing counsel at least seven (7) business days before the hearing date and filed no later than three (3) days before the hearing date.⁴

Demonstratives are not an opportunity to advance a new argument. Nor are they evidence, nor will they be relied upon as evidence. Rather, demonstratives are visual aids to a party’s oral presentation and explanation of arguments and evidence presented in the papers. 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).

Because of the strict prohibition against the presentation of new evidence or arguments at a hearing, it is strongly recommended that each

⁴ The parties may stipulate to an alternative schedule for serving and filing demonstratives, and may request Board modification of the schedule for filing and serving demonstratives at least seven (7) business days before the hearing date.

demonstrative include a citation to a paper in the record. This allows the Board to easily ascertain whether a given demonstrative contains “new” argument or evidence or, instead, contains only that which is developed in the existing record.

The Board is in receipt of Petitioner’s motion to strike portions of Exhibit 2011 and Patent Owner’s Sur-reply and will rule on that motion in due course upon receiving Patent Owner’s opposition. That is not to say that the Board will rule on the motion prior to the oral hearing. Accordingly, Patent Owner is advised to consider preparing its demonstratives in such a way that its presentation can, but need not, rely on the objected-to material and the objected-to material is readily excisable from the presentation. In so advising, the Board emphasizes that it has *yet to decide* whether the motion to strike will be granted or denied.

Upon the exchange of demonstratives, the parties shall meet and confer in good faith to resolve any objections a party has to the propriety of any demonstrative. If such objections cannot be resolved, the parties may file their objections with the Board no later three (3) days before the hearing. The objections should identify with particularity the objected to portions of the demonstratives and include a one (1) 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.⁵ Any objections that are not timely presented are waived.

⁵ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

Finally, during each presentation, the presenting party should identify with specificity (e.g., by demonstrative slide number, exhibit page number, or briefing page number) each document referred to in order to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants.

C. Presenting Counsel

The Board generally expects lead counsel for each party to be present at the hearing. *See* CTPG 11. However, any counsel of record may present the party's argument as long as that counsel is present by video.

D. Video or Telephonic Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least five (5) business days 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. During the hearing, the parties are once again reminded to identify with specificity each paper referenced to ensure the clarity and accuracy of the court

reporter's transcript and for the benefit of all participants. In addition, the parties are advised to identify themselves each time they speak.

Furthermore, because the remote nature of the hearing may result in an audio lag, the parties are advised to observe a pause prior to speaking 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, counsel should let the panel know as soon as possible, and appropriate adjustments will be made.⁶

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

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 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

⁶ For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

requests must be presented in a separate communication at least five (5) business days before the hearing date.

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. 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 PTAB.⁷

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 PTAB’s hearing schedule. A party should submit a LEAP practitioner request, no later than five (5) business days before the oral hearing, by email to the Board at PTABHearings@uspto.gov.⁸

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. A

⁷ 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.

⁸ 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.

requesting party has discretion to determine the type and quantity of oral argument that will be conducted by the LEAP practitioner, provided the opportunity afforded is substantive and meaningful.⁹ 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, to clarify any statements made 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 the merits of a party's arguments regarding that issue, from the party's decision to have (or not to have) a LEAP practitioner argue the issue.

All practitioners appearing before the Board shall demonstrate the highest professional standards. As such, all practitioners are expected to have a command of the factual record, the applicable law, and Board procedures.

II. ORDER

Accordingly, it is

ORDERED that oral argument for this proceeding shall commence at 1:00 PM Eastern Time on December 5, 2024, by video, and proceed in the manner set forth herein.

⁹ Examples of substantive issues a LEAP practitioner may argue include claim construction, exclusion of evidence, or patentability argument(s) (e.g., the analysis of prior art or objective indicia of non-obviousness).

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