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

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

THE HOLDING COMPANY, LLC,
Patent Owner.

IPR2024-00398
Patent 11,265,680 B2

Before CHRISTOPHER M. KAISER, SHEILA F. McSHANE, and GARTH D. BAER, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

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

I. ORAL ARGUMENT

The parties request an oral argument hearing in this proceeding. Papers 18, 19. Both parties request that the hearing be held in-person at the Denver, Colorado, USPO Regional Office. *Id*. Both parties also request that 45 minutes of argument be permitted per party. *Id*.

In-person oral arguments will commence at 1:00 PM ET on Tuesday, April 29, 2025, at the Denver, Colorado, USPO Regional Office, 1961 Stout St., 14th Floor, Denver, CO 80294. At the hearing, each party will have 45 minutes of argument time. Petitioner will argue first and may present its arguments and may reserve no more than half of its time for rebuttal. Patent Owner will argue second and may reserve no more than half of its time for sur-rebuttal. Petitioner may present rebuttal to respond to arguments made by Patent Owner. In accordance with the Consolidated Trial Practice Guide[1] ("CTPG"), Patent Owner may present sur-rebuttal to respond to arguments made by Petitioner.

To facilitate planning, each party must contact PTAB Hearings at PTABHearings@uspto.gov at least five business days prior to the oral hearing date. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

II. DEMONSTRATIVES

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 at 2–5 (PTAB Jan. 27, 2014) (Order – Conduct of the Proceeding), for guidance regarding the appropriate content of demonstrative exhibits. Under

[1] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.

37 C.F.R. § 42.70(b), demonstrative exhibits must be served on opposing counsel at least seven business days before the hearing. The parties also shall file the demonstrative exhibits with the Board at least three business days before the hearing. A copy of the demonstratives should also be sent by email to PTABHearings@uspto.gov.

Demonstratives are not a mechanism for making new arguments. Demonstratives also are not evidence, and the Board will not consider them 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 must 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.*, IPR2013-00041, Paper 65 at 2–3 (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, the Board strongly recommends that each demonstrative include a citation to a paper in the record, which 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 parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits. Any party with unresolved objections

must file a list of those objections with the Board at least two business days before the hearing. For each objection, the list must identify with particularity which portions of the demonstrative exhibits are subject to the objection and may include a short, one-sentence statement explaining the objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits not timely presented may be considered waived. The Board may reserve ruling on the objections until after the hearing.

If desired, a request for a pre-hearing conference must be made by April 10, 2025. To request such a conference, an email message should be sent to Trials@uspto.gov including several dates and times of availability for one or both parties, as appropriate, that are generally no later than three business days before the hearing.

III. OTHER MATTERS

The Board generally expects lead counsel for each party to be present at the oral hearing. Any counsel of record may present the party's argument, in whole or in part, as long as that counsel is present.

Any special requests for audio-visual equipment must be directed to PTABHearings@uspto.gov. A party may also indicate any special requests related to appearing at the oral hearing, such as a request to accommodate visual or hearing impairments, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication not less than five days before the hearing.

The panel will have access to all papers filed with the Board, including demonstratives. During the oral hearing, attorneys must identify

clearly and specifically each demonstrative referenced (e.g., by slide or screen number) to ensure the clarity and accuracy of the court reporter's transcript. In addition, the Board suggests that the attorneys identify themselves at the beginning of their presentation or after another attorney speaks.

Members of the public may request to attend this oral hearing. If resources are available, the Board generally expects to grant such requests. If either party has concerns about the presence of public observers, for example, because confidential information may be discussed, the party must notify the Board at PTABHearings@uspto.gov at least ten business days prior to the hearing date.

IV. 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 Board defines a LEAP practitioner as a patent agent or attorney having three or fewer substantive oral arguments in any federal tribunal, including PTAB.[2]

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 minutes of additional argument time to that party, depending on the length of the proceeding and the

[2] 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.

PTAB's hearing 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.[3]

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.[4] 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, during oral argument, and to clarify any statements 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 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

[3] 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.

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

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 will permit the 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 they represent.

V. ORDER

Accordingly, it is

ORDERED that the parties' requests for oral hearing are *granted* subject to the conditions set forth above in this Order; and

FURTHER ORDERED that an in-person oral hearing, conducted pursuant to the procedures outlined above, shall commence at 1:00 PM ET on Tuesday, April 29, 2025.

PETITIONER:

Jennifer C. Bailey
Callie A. Pendergrass
ERISE IP, P.A.
Jennifer.Bailey@eriseip.com
Callie.Pendergrass@eriseip.com

PATENT OWNER:

John S. LeRoy
Frank A. Angileri
Marc Lorelli
BROOKS KUSHMAN P.C.
jleroy@brookskushman.com
fangileri@brookskushman.com
mlorelli@brookskushman.com