

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABBOTT LABORATORIES and ABBOTT DIABETES CARE INC.,
Petitioner,

v.

ALTIVERA LLC,
Patent Owner.

IPR2024-00425
Patent 7,969,307 B2

Before JOSIAH C. COCKS, STEPHEN E. BELISLE, and
BACH V. HOANG, *Administrative Patent Judges*.

HOANG, *Administrative Patent Judge*.

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

I. ORAL ARGUMENT

A. Time and Format

The parties have each filed a Request for Oral Argument in this proceeding. IPR2024-00425, Papers 29 and 30. Accordingly, we will hear oral arguments in this proceeding, in a fashion as set forth below, beginning at **10:00 AM EASTERN TIME on Wednesday April 23, 2025, in-person at the USPTO Headquarters in Alexandria, Virginia.**

The argument will be in-person at the USPTO Headquarters in Alexandria, Virginia. All three judges will appear in-person.

Both parties have requested 60 minutes of argument time for each side. Paper 29, 1; Paper 30, 1. Each party is granted a total of 60 minutes of argument time.

Petitioner, as the party with the burden of proof and persuasion, will start with its case in chief. Then, Patent Owner will present its case in chief. Both parties may reserve some, but no more than half, of their allotted time for a rebuttal by Petitioner following Patent Owner's case in chief, and then a sur-rebuttal by Patent Owner. The parties are reminded that arguments made during rebuttal and sur-rebuttal periods must be responsive to arguments the opposing party made in its immediately preceding presentation. The parties are also reminded that during the hearing, the parties "may only present arguments relied upon in the papers previously submitted." Patent Trial and Appeal Board Consolidated Trial Practice Guide ("CTPG") 86 (Nov. 2019).¹ Both parties will have the ability to

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

present demonstrative exhibits during the hearing, as discussed further below.

The parties are directed to contact the Board at least ten days in advance of the hearing if there are any concerns about disclosing confidential information. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

The parties may request a pre-hearing conference in advance of the hearing. *See* CTPG 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.* 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 a conference call for that purpose.

B. Demonstratives

At least seven business days prior to the hearing, each party shall serve on the other party any demonstrative exhibit(s) it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). At least four business days prior to the hearing, each party shall file any demonstrative exhibits it intends to use during the hearing as exhibits.

Demonstrative exhibits used at the oral hearing are aids to oral argument and are not evidence. Accordingly, demonstrative exhibits shall be clearly marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. Demonstrative exhibits cannot be used to

advance arguments or introduce evidence not previously presented in the record. *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 86; *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).

Furthermore, because of the strict prohibition against the presentation of new evidence or arguments at a hearing, it is strongly recommended 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.

Due to the nature of the Board’s consideration of demonstratives and the opportunity afforded for the parties to reach an agreement without involving the Board, the Board does not anticipate that objections to demonstratives are likely to be sustained. Nevertheless, to the extent that 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.² Any objection to demonstratives that is not timely presented will be considered waived.

Finally, 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.

D. Remote Attendance Request

Petitioner requests a public hearing with a real time audio stream. Paper 29, 1. The Board generally expects to grant such requests. If Patent Owner objects to the Board granting Petitioner's request, for example, because confidential information may be discussed, the Patent Owner must notify the Board at PTABHearings@uspto.gov at least ten business days prior to the hearing date.

² If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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 (*see* Section I.D above), 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 business days before the hearing date.

F. 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 to develop their skills. 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.³

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 request, no later than

³ 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.

at least five (5) business days before the oral hearing, by email to the Board at PTABHearings@uspto.gov.⁴

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.⁵ 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

⁴ 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.

⁵ 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.

II. ORDER

Accordingly, it is

ORDERED that oral argument for this proceeding shall commence at **10:00 AM EASTERN TIME on April 23, 2025**, and proceed in the manner set forth herein.

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Patent 7,969,307 B2

FOR PETITIONER:

S. Giri Pathmanaban
Michael A. Morin
Joseph C. Akalski
Steven W. Peters
LATHAM & WATKINS LLP
giri.pathmanaban@lw.com
michael.morin@lw.com
joe.akalski@lw.com
steven.peters@lw.com

FOR PATENT OWNER:

David Pekarek Krohn
Rodger Carreyn
PERKINS COIE LLP
pekarekkrohn-ptab@perkinscoie.com
carreyn-ptab@perkinscoie.com