

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROFRAC HOLDING CORPORATION and
U.S. WELL SERVICES, LLC,
Petitioner,

v.

HALLIBURTON ENERGY SERVICES, INC.,
Patent Owner.

PGR2023-00023
Patent 11,373,058 B2

Before HUBERT C. LORIN, JAMES L. MAYBERRY, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *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 **11 AM Eastern Time on August 14, 2024** by Video. The Board will provide a court reporter for the hearings, and the reporter's transcript will constitute the official record of the hearings.¹

Each party will have **60 minutes** of argument time. Petitioner will present its case, followed by Patent Owner's response. Petitioner may reserve rebuttal time to respond to Patent Owner's arguments. Patent Owner may request to reserve time for a brief sur-rebuttal. *See Consolidated Trial Practice Guide*² ("CTPG"), issued in November 2019, 83.

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

¹ If there are any concerns about disclosing confidential information, the parties must contact the Board at Trials@uspto.gov at least 10 business days before the hearing.

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

B. Demonstratives

As set forth in 37 C.F.R. § 42.70(b), demonstratives shall be served on opposing counsel at least 7 business days before the hearing and filed³ no later than 3 business days before the hearing.⁴

Demonstratives are not evidence and are not a mechanism for making new arguments. Rather, demonstratives are visual aids to a party's oral presentation regarding arguments and evidence previously discussed in the papers. Accordingly, demonstratives shall include "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer.

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. *See Dell Inc. v. Accelaron, 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"); *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).

Due to the nature of the Board's consideration of demonstratives and the opportunity afforded for the parties to reach an agreement without

³ Demonstratives should be filed as an Exhibit in the USPTO's electric filing system.

⁴ The parties may stipulate to an alternative schedule for serving demonstratives at least 7 business days before the hearing.

involving the Board, the Board does not anticipate that objections to demonstratives are likely to be sustained. Nevertheless, if 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.⁵ 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* CTPG 11. Any counsel of record may present the party's argument.

a. 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.⁶ The Board defines a LEAP

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

⁶ 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.

practitioner as a patent agent or attorney having 3 or fewer substantive oral arguments in any federal tribunal, including PTAB.⁷

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 15 minutes of additional argument time to that party. A party should submit the LEAP Practitioner Request for Oral Hearing Participation and Verification Form,⁸ at least 5 business days before the oral hearing, by email to the Board at PTABHearings@uspto.gov.

Even where an advocate does not meet the LEAP eligibility requirements, but nonetheless considers 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. Though additional argument time will not be provided, 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.

⁷ Whether an argument is "substantive" will be made on a case-by-case basis, considering 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 Available at www.uspto.gov/leap.

D. Video Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least 5 business days prior to the hearing 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 5 business days prior to the hearing to receive dial-in 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 reminded to identify clearly and specifically each paper referenced (e.g., by slide or screen number for a demonstrative) to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically. 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.⁹

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, the party must notify the Board at PTABHearings@uspto.gov at least 10 business days prior to the hearing.

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

II. ORDER

Accordingly, it is

ORDERED that oral argument will commence at **11 AM Eastern Time on August 14, 2024** by Video, and proceed in the manner set forth herein.

⁹ For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

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