

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CXLOYALTY, INC.,¹
Petitioner,

v.

MARITZ HOLDINGS INC.,
Patent Owner.

Case CBM2018-00037
Patent 7,134,087 B2

Before MICHAEL R. ZECHER, JUSTIN T. ARBES, and
JON B. TORNQUIST, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

ORDER
Trial Hearing
35 U.S.C. § 326(a)(10) and 37 C.F.R. § 42.70

¹ Petitioner filed updated mandatory notice information indicating that it changed its name from Connexions Loyalty, Inc. to cxLoyalty, Inc. Paper 30. Accordingly, the caption for this proceeding has been changed.

Petitioner and Patent Owner requested a hearing in the above proceeding pursuant to 37 C.F.R. § 42.70(a). *See* Papers 27, 29. The requests are *granted*.

Each party will have sixty (60) minutes of total time to present arguments. Petitioner will proceed first to present its case as to the alleged unpatentability of the challenged claims and proposed substitute claims in Patent Owner's Motion to Amend, and may reserve rebuttal time (no more than thirty (30) minutes). Patent Owner then will respond to Petitioner's presentation and present its case as to whether its Motion to Amend meets the requirements set forth in 37 C.F.R. § 42.221, and may reserve rebuttal time (no more than fifteen (15) minutes). Petitioner then may respond to Patent Owner's arguments. Finally, Patent Owner may present a brief sur-rebuttal responding to Petitioner's rebuttal arguments only.

The hearing will commence at 1:00 PM Eastern Time on September 17, 2019. The hearing will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. In-person attendance will be accommodated on a first come, first served basis. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

In its hearing request, Petitioner also states that "a pre-hearing conference would be appropriate to preview (but not argue) the issues to be discussed at the oral hearing and to seek the Board's guidance as to particular issues that the panel would like addressed by the parties."

Paper 29, 3 n.1. The parties shall confer with each other and send to the Board, by email to *Trials@uspto.gov*, a list of times when both parties are available for a conference call during the week of September 9–13, 2019.

The parties also may include in the email a list of issues that they would like to discuss during the call. *See* Trial Practice Guide Update (August 2018), 19–20, *available at* https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf.

Notwithstanding 37 C.F.R. § 42.70(b), the parties may agree on a date for service of demonstrative exhibits. The parties shall confer with each other regarding any objections to demonstrative exhibits and file demonstrative exhibits with the Board at least two business days prior to the hearing. For any issue that cannot be resolved after conferring with the opposing party, the parties may file jointly a one-page list of objections at least two business days prior to the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one sentence) of the reason for each objection. No argument or further explanation is permitted. We will consider the objections and schedule a conference call, if necessary. Otherwise, we will reserve ruling on the objections until the hearing or after the hearing. Any objection to demonstrative exhibits that is not presented timely will be considered waived. Each party also shall provide a hard copy of its demonstrative exhibits to the court reporter at the hearing.

The parties are directed to *St. Jude Med., Cardiology Div., Inc. v. Board of Regents of the Univ. of Mich.*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), regarding the appropriate content of demonstrative exhibits. The parties are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party's argument, in whole or in part, as long as that counsel is present in person. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two (2) business days prior to the oral hearing to discuss the matter.

A party may request remote video attendance for one or more of its other attendees to view the hearing from any U.S. Patent and Trademark Office location. The available locations include the Texas Regional Office in Dallas, Texas; the Rocky Mountain Regional Office in Denver, Colorado; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the Silicon Valley Office in San Jose, CA. To request remote video viewing, a party must send an email message to *Trials@uspto.gov* ten business days prior to the hearing, indicating the requested location and the number planning to view the hearing from the remote location. The Board will notify the parties if the request for video viewing is granted. Note that it may not be possible to grant the request due to the availability of resources.

Any special requests for audio-visual equipment should be directed to *Trials@uspto.gov*. A party may also indicate any special requests related to appearing at an in-person oral hearing, such as a request to accommodate physical needs that limit mobility or visual or hearing impairments, and indicate how the Board may accommodate the special request. Any special requests must be presented in a separate communication not less than five (5) days before the hearing.

CBM2018-00037
Patent 7,134,087 B2

PETITIONER:

Richard Wydeven
Steven M. Lieberman
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
rwydeven@rfem.com
slieberman@rfem.com

PATENT OWNER:

Robert M. Evans, Jr.
Michael J. Hartley
Micah T. Uptegrove
STINSON LEONARD STREET LLP
robert.evans@stinson.com
michael.hartley@stinson.com
muptegrove@senniger.com