

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE BOEING COMPANY,
Petitioner,

v.

SEYMOUR LEVINE,
Patent Owner.

Case IPR2015-01341
Patent RE39,618

Before MICHAEL W. KIM, TRENTON A. WARD, and
DANIEL N. FISHMAN, *Administrative Patent Judges*.

WARD, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

On August 22, 2016, pursuant to 37 C.F.R. § 42.70, both Petitioner and Patent Owner requested oral hearing. Papers 38, 40. The request for oral hearing is granted.

Oral argument will be held on September 14, 2016, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, commencing at 1:30 PM ET. Each party will have a total of forty-five (45) minutes of argument time. Petitioner bears the ultimate burden of proof that the claims at issue are unpatentable. Therefore, Petitioner will proceed first to present its case with regard to the challenged claims and grounds on which we instituted trial in these proceedings. Patent Owner then will argue its opposition to Petitioner's case. Finally, Petitioner may use any time it reserved to rebut Patent Owner's opposition.

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. The hearing will be open to the public for in-person attendance. If the parties have any concern about disclosing confidential information, they are to contact the Board at least 5 days in advance of the hearing to discuss the matter.

The parties are reminded that under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been so filed.

Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served before the hearing. The parties shall provide a courtesy copy of any demonstrative exhibits to the Board prior to the hearing by emailing them to Trials@uspto.gov. The parties shall *not* file any demonstrative exhibits in these

proceedings without prior authorization from the Board. A printed copy of the demonstratives should be provided to the court reporter at the hearing.

The parties must file any objections to the demonstratives with the Board before the hearing. Any objection to the demonstrative exhibits that is not presented timely will be considered waived. The objections should identify with particularity which demonstratives are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB January 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties are reminded that demonstrative exhibits are not evidence.

The Board expects lead counsel for each party to be present at oral hearing, although any backup counsel may make the actual presentation, in whole or in part. If lead counsel for either party will not be in attendance at oral hearing, the Board should be notified via a joint telephone conference call no later than two business days prior to the oral hearing to discuss the matter. Furthermore, for this proceeding, the Board will permit two attorneys at counsel table for Patent Owner and counsel table for Petitioner to use computers, in addition to counsel presenting the arguments, as requested by Patent Owner.

Any special requests for audio visual equipment should be directed to Trials@uspto.gov. At least one judge will be participating remotely via a videoconferencing device and will not be able to view the projection screen in the

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hearing room. 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 avoid confusion, and to ensure the clarity and accuracy of the reporter's transcript.

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