

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALLSTEEL INC.,
Petitioner,

v.

DIRTT ENVIRONMENTAL SOLUTIONS LTD.,
Patent Owner.

Case IPR2015-01691
Patent 8,024,901 B2

Before SALLY C. MEDLEY, SCOTT A. DANIELS, and
JACQUELINE T. HARLOW, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Trial Hearing
35 U.S.C. § 316(a)(10)

Both parties request a hearing in this case regarding newly instituted claims 8, 11, 13, and 21–23 pursuant to 37 C.F.R. § 42.70. Papers 54, 55. The requests are *granted*.

The hearing will commence at 1:00 PM Eastern Time on February 15, 2019, and it 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.

Based on the record of this proceeding, each party will have thirty (30) minutes total time to present arguments for claims 8, 11, 13, and 21–23.¹ Petitioner will proceed first to present its case with respect to claims 8, 11, 13, and 21–23. Thereafter, Patent Owner will respond to Petitioner's presentation with respect to claims 8, 11, 13, and 21–23. Petitioner may reserve rebuttal time to respond to Patent Owner's presentation.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served seven business days prior to the hearing. They shall be filed at the Board four business days prior to the hearing. Demonstrative exhibits used at the oral hearing are aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide of a demonstrative exhibit may be 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) (noting that the “Board was obligated to dismiss [the petitioner's] untimely argument . . . raised for the first time during oral argument”). Here, due to the limited issues for hearing, we encourage the parties to limit the pages of its respective demonstrative exhibits to no more than twenty (20) pages.

¹ Petitioner does not specify an amount of time for presenting arguments. Paper 54. Patent Owner requests a one-hour hearing, with thirty (30) minutes allotted to each side. Paper 55, 1.

The parties should attempt to work out any objections to demonstratives prior to involving the Board. Should either party disagree with the propriety of any of the opposing party's demonstratives, the party may send an email to Trials@uspto.gov three days prior to the hearing, identifying the opposing party's slide(s) objected to and a brief sentence as to the general basis of the objection(s). The Board will then take the objections under advisement, and if the content is inappropriate, it will not be considered. Any dispute over the propriety of demonstrative exhibits that is not timely presented three business days prior to the hearing will be considered waived. The parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 118 (October 23, 2013), regarding the appropriate content of demonstrative exhibits. In general, if the content on a slide cannot be readily associated with an argument made, or evidence referenced, in a substantive paper, it is inappropriate. The best practice is to indicate on each slide where support may be found in a substantive paper and/or an exhibit of record in this proceeding.

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 parties also should note that at least one member of the panel may be attending the hearing electronically from a remote location, and that if a demonstrative is not made fully available or visible to all judges at the hearing, that demonstrative will not be considered. Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. Requests for audio-visual equipment are to be

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made 5 days in advance of the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

The Board expects lead counsel for each party to be present at the hearing, although any backup counsel may make the actual presentation, in whole or in part. If any lead counsel will not be in attendance at the hearing, the Board should be notified via a joint telephone conference call no later than two days prior to the hearing to discuss the matter.

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