

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE TORO COMPANY
Petitioner,

v.

MTD PRODUCTS INC.,
Patent Owner.

Cases

IPR2016-00194 (Patent 8,011,458)

IPR2016-00219 (Patent 8,136,613)

Before WILLIAM V. SAINDON, RICHARD E. RICE, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

IPR2016-00194 (Patent 8,011,458)

IPR2016-00219 (Patent 8,136,613)

The parties have requested an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 27, 29.¹ The request is *granted*. The hearing will commence at 1:00 PM Eastern Time on February 7, 2017, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

Petitioner and Patent Owner each requested one hour per case. Due to the overlap in subject matter, however, each party will be allocated a grand total of 90 minutes for arguments. The parties may budget their 90-minute time allocation as they see fit. A single transcript will be taken and all statements will be presumed to apply to both proceedings. As such, a party need not repeat positions it has expressed with respect to the other case, unless it explicitly identifies otherwise during the hearing. The Board will provide a court reporter, and the transcript shall be made public and constitute the official record of the hearing.

Per Patent Owner's request, the hearing format will be: arguments from both sides on IPR2016-00194, followed by arguments from both sides in IPR2016-00219.² Petitioner bears the ultimate burden of proof that the claims at issue in these reviews are unpatentable. Petitioner, therefore, will begin by presenting its case regarding the challenged claims and grounds for which the Board instituted trial in IPR2016-00194. Patent Owner will then respond to Petitioner's arguments in IPR2016-00194, and present its case for any motions it has submitted, as applicable, if it chooses. Petitioner may reserve time to reply to arguments presented by Patent Owner. Patent Owner may reserve time to reply to arguments presented by Petitioner, if

¹ IPR2016-00194. Papers 24 and 26 in IPR2016-00219.

² Upon agreement and with at least one business day's notice to the Board, the parties may propose a different format, subject to Board approval.

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any, with respect to the motions it has submitted. We will then, without break, proceed with IPR2016-00219 under the same format using the remaining time.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing. The panel requests that demonstrative exhibits be filed with the Board at least three business days before the hearing. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), regarding the appropriate content of demonstrative exhibits. The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved the parties must file any objections to demonstratives with the Board at least three business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection, 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 schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

The Board expects a registered practitioner for each party to be present at the hearing, although any counsel of record may make the actual presentation, in whole or in part.

Please note that the courtroom has extremely limited seating. Tables for counsel are provided and each seat two. The approximately 8 remaining

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seats in the courtroom are open to the public and are accommodated on a first-come, first-served basis. The parties should contact the Board as soon as possible if it expects seating capacity issues.

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. Requests for audio-visual equipment are to be made five days in advance of the hearing date. The request must be sent to Trials@uspto.gov, any requests not sent *specifically to that email address* will not be considered timely. If the request is not received timely, the equipment may not be available on the day of the hearing.

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