

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PACIFIC SURF DESIGNS, INC.,  
Petitioner,

v.

SURF WAVES, LTD.,  
Patent Owner.

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Case IPR2016-01454  
Patent 8,088,016 B2

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Before PHILLIP J. KAUFFMAN, BEVERLY M. BUNTING, and  
JASON W. MELVIN, *Administrative Patent Judges*.

MELVIN, *Administrative Patent Judge*.

ORDER  
*Request for Oral Argument*  
37 C.F.R. § 42.70

The Amended Scheduling Order for this proceeding provided that an oral hearing would be conducted on November 8, 2017, if requested by either party and granted by the Board. Paper 17, 2; Paper 10, 8. The parties requested oral hearing pursuant to 37 C.F.R. § 42.70. Papers 19, 20. The request for oral hearing is *granted*.

Please note the time and location of the hearing. The hearing will commence at 1:30 PM on November 8, 2017, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.<sup>1</sup> 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 that will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are to contact the Board at least 10 days in advance of the hearing to discuss the matter.

Each party will have 30 minutes to present its arguments. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in these proceedings are unpatentable. Therefore, Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. After Petitioner's presentation, Patent Owner will respond to Petitioner's argument. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. No live testimony from any witness will be taken at the oral argument. The parties may also address any pending motions during their respective presentations.

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<sup>1</sup> See <https://go.usa.gov/xRhFF> for additional information.

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 at least seven business days before the hearing date. Notwithstanding 37 C.F.R. § 42.70(b), demonstratives should be filed at the Board no later than four business days before the hearing.

The parties should note that at least one member of the panel will be attending the hearing electronically from a remote location, and that if a demonstrative is not filed or otherwise made fully available or visible to the judge presiding over the hearing remotely, that demonstrative will not be considered. Note that demonstratives projected in the hearing room are generally not visible to remote judges.

The parties must file any objections to the demonstratives with the Board at least four business days before the hearing. Any objection to 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*, Case IPR2013-00041 (PTAB

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Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects lead counsel for both parties to be present in person at the oral hearing. Any counsel of record, however, may present a party's argument. If either party expects that its lead counsel will not be attending the oral argument, it should initiate a joint telephone conference with the Board no later than two business days prior to the oral hearing to discuss the matter.

Any special requests for audiovisual equipment should be directed to [Trials@uspto.gov](mailto:Trials@uspto.gov). Requests for special equipment will not be honored unless presented in a separate communication not less than seven business days before the hearing, directed to the above email address.

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