

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAMPBELL SOUP COMPANY,
CAMPBELL SALES COMPANY, and
TRINITY MANUFACTURING, LLC,

Petitioner,

v.

GAMON PLUS, INC.,
Patent Owner.

Cases IPR2017-00087 (Patent 8,827,111 B2);
IPR2017-00091 (Patent D621,645 S)
IPR2017-00094 (Patent D612,646 S)¹

Before GRACE KARAFFA OBERMANN, BART A. GERSTENBLITH,
and ROBERT L. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ We exercise our discretion to issue one Order in each of these proceedings.
The parties may not use this caption style.

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The Scheduling Orders in these proceedings set the date for oral hearing to January 10, 2018, if a hearing was requested by the parties and granted by the Board. *See, e.g.*, Paper 13, 6.² In an email on December 5, 2017, we indicated a desire to change the hearing date to January 23, 2018, and requested that the parties indicate whether they were amendable to the change or whether it would cause undue hardship. Petitioner responded that it was available on January 23rd. Patent Owner did not respond. Accordingly, we hereby change the hearing date to January 23, 2018.

Petitioner and Patent Owner each request an oral hearing pursuant to 37 C.F.R. § 42.70. Papers 42, 43. Petitioner requests 60 minutes of time in IPR2017-00087 (Paper 42, 2) and a combined 90 minutes of time to address both IPR2017-00091 (Paper 46, 2) and IPR2017-00094. Patent Owner's requests for time mirror those of Petitioner. These requests are *granted* with the following modifications.

Each party will first have 35 minutes of time to present arguments in IPR2017-00087. Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. Therefore, Petitioner will proceed first to present its case with regard to the challenged claims for which we instituted trial. Thereafter, Patent Owner will argue its opposition to Petitioner's case. After that, Petitioner may use any time it reserved to rebut Patent Owner's opposition. After the conclusion of arguments in IPR2017-00087, the Board may take a short recess.

Then, each party will have 40 minutes of total time to present arguments in IPR2017-00091 and IPR2017-00094, which will be argued

² Citations are to IPR2017-00087 unless otherwise indicated.

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together as requested by the parties. The sequence of arguments will proceed in the same order as discussed above with Petitioner presenting first, followed by Patent Owner's opposition, and, lastly, any Petitioner rebuttal.

The hearing shall commence at 9:00 AM (EST) on **January 23**, 2018. The hearing will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, VA. The Board will provide a court reporter, and the transcript shall constitute the official record of the hearing. The Board will ensure that two distinct transcripts are created – one for IPR2017-00087 and then a second transcript for the combined hearing of IPR2017-00091 and IPR2017-00094.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served seven business days before the hearing. Notwithstanding what is expressly stated in § 42.70, however, the parties shall file the demonstrative exhibits no later than three business days before the hearing to allow the panel sufficient time to review the materials.

The Board reminds the parties that demonstrative exhibits are not evidence, but are intended to assist the parties in presenting their oral arguments to the Board. The Board also reminds the parties that demonstrative exhibits are not a mechanism for making arguments not previously addressed in the papers. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance 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. If such objections

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cannot be resolved, the parties may file any remaining objections with the Board at least three business days before the oral hearing. The objections should identify with particularity the portions of the demonstrative exhibits that are subject to objection and include a one-sentence statement of the basis 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 until the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

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. If either party anticipates 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 business days prior to the oral hearing to discuss the matter.

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 no later than seven days in advance of the hearing date. The request is to be sent directly to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

In light of the foregoing, it is:

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ORDERED that the oral hearing, conducted pursuant to the procedures outlined above, shall commence at 9:00 AM (EST) on January 23, 2018.

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