

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

AFFINITY LABS OF TEXAS, LLC,
Patent Owner.

Cases IPR2016-01701 (Patent 9,094,802 B2)
IPR2017-00122 (Patent 9,444,868 B2)

Before KEVIN F. TURNER, LYNNE E. PETTIGREW, and
JON B. TORNQUIST, *Administrative Patent Judges*.

TORNQUIST, *Administrative Patent Judge*.

ORDER

Consolidating Oral Argument in IPR2016-01701 and IPR2017-00122
37 C.F.R. § 42.70

IPR2016-01701 (Patent 9,094,802 B2)

IPR2017-00122 (Patent 9,444,868 B2)

On October 26, 2017, we set oral argument in IPR2016-01701 for November 30, 2017. IPR2016-01701, Paper 19, 1. The parties have also requested oral argument in IPR2017-00122, which is preliminarily scheduled for December 21, 2017. IPR2017-00122, Papers 14, 15.

On November 16, 2017, a conference call was held among Judges Tornquist, Turner, and Pettigrew and counsel for each party, in which the parties jointly requested that oral argument in IPR2016-01701 and IPR2017-00122 be consolidated and held on December 21, 2017. This request is *granted*.

Petitioner and Patent Owner will each have 60 minutes total to present their arguments for the two consolidated cases. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue are unpatentable. Therefore, Petitioner will open the hearing by presenting its argument. After Petitioner's presentation, Patent Owner will respond to Petitioner's argument. Petitioner may reserve time to respond to Patent Owner's argument. Patent Owner may not reserve time.

The hearing will commence at 1:00 PM Eastern Time on December 21, 2017, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. 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, the parties should request a joint telephone conference with the Board no later than 10 days prior to the oral hearing to discuss the matter.

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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), each party also shall file its demonstrative exhibits with the Board as a separate paper at least two business days prior to the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing, but hard copies of the demonstratives are not needed for the judges.

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, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. Demonstrative exhibits are not evidence and may not introduce new evidence or arguments. Instead, demonstrative exhibits should cite to evidence in the record. The parties also should note that at least one member of the panel will be attending the oral hearing electronically from a remote location. Thus, the presenter should speak only when standing at the hearing room lectern and must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing.

The parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits. Any party with unresolved objections to a demonstrative exhibit must file a list of those objections with the Board at least two business days before the hearing. For each objection, the list must identify with particularity which portions of the exhibits are subject to the objection and may include a short, one-sentence statement explaining the objection. No argument or further explanation is permitted. The Board will

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consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections.

Generally, the Board expects lead counsel for each party to be present in person at the oral hearing. If any party expects that its lead counsel will not be attending the oral hearing, the parties should request a joint telephone conference with the Board no later than 10 days prior to the oral hearing to discuss the matter.

Any special requests for audio-visual equipment should be directed to Trials@uspto.gov. Requests for special equipment will not be honored unless presented in a separate communication not less than five days before the hearing directed to the above email address.

In view of the foregoing, it is:

ORDERED that oral argument in IPR2016-01701, currently scheduled for November 30, 2017, is hereby *cancelled*;

FURTHER ORDERED that the parties' requests for oral argument in IPR2017-0122 are hereby *granted*; and

FURTHER ORDERED that a consolidated oral argument for IPR2016-01701 and IPR2017-00122 will be held on December 21, 2017, as outlined in this Order.

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