

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETAPP, INC.,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

Case IPR2017-00276
Patent 6,633,945

Before JEFFREY S. SMITH, JENNIFER S. BISK, and
BEVERLY M. BUNTING, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

On January 31, 2018, pursuant to 37 C.F.R. § 42.70, both Petitioner and Patent Owner requested oral hearing. Papers 25, 26. The requests for oral hearing are granted.

Oral argument will be held on Thursday, March 1, 2018 on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, commencing at 10:00 a.m. Eastern Time. Each party will have a total of thirty (30) minutes of argument time. Petitioner bears the ultimate burden of proof that the claims at issue are unpatentable. Therefore, Petitioner will proceed first to present its case with regard to the challenged claims and grounds on which we instituted trial in these proceedings. Patent Owner then will argue its opposition to Petitioner's case. Finally, Petitioner may use any time it reserved to rebut Patent Owner's opposition.

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. Space in the hearing room is limited, and any attendees beyond five per party (including any attorneys who may be appearing) will be accommodated on a first-come, first-served basis.

At least one member of the panel will be attending the hearing electronically from a remote location and will not be able to view the projection screen in the hearing room. Thus, if a demonstrative exhibit is not made available in advance or visible to the judge(s) presiding over the hearing remotely, that demonstrative exhibit will not be helpful. Each 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 and for the

benefit of the judge(s) presiding over the hearing remotely. A hard copy of the demonstratives, if filed, should be provided to the court reporter at the hearing. Also, the parties are reminded that, at the oral argument, they “may rely upon evidence that has been previously submitted in the proceeding and may only present arguments relied upon in the papers previously submitted.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). “No new evidence or arguments may be presented at the oral argument.”

At least seven (7) business days prior to the hearing, each party shall serve on the other party (and not file) any demonstrative it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). The parties should attempt to resolve any objections to demonstratives prior to involving the Board. If any objections remain, a party may raise them during the hearing as part of its allotted argument time. At least five (5) business days prior to the hearing, the parties shall provide the demonstratives to the Board by emailing them in portable document format (.pdf) to Trials@uspto.gov. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, No. IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65) for guidance regarding appropriate content of demonstratives.

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 (2) business days prior to the hearing to discuss the matter.

Any special requests for audio visual equipment should be directed to Trials@uspto.gov at least **five (5) days in advance of the hearing date**. If the

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request is not received timely, the equipment may not be available on the day of the hearing. Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797.

It is

ORDERED that oral argument will commence at 10:00 AM ET on
March 1, 2018.

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