

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COASTAL INDUSTRIES, INC.,
Petitioner,

v.

SHOWER ENCLOSURES AMERICA, INC.,
Patent Owner.

Case IPR2017-00573
Patent 7,174,944

Before MICHAEL W. KIM, CARL M. DEFRANCO, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*

ORDER
Supplemental Trial Hearing
37 C.F.R. § 42.70

Patent Owner and Petitioner each request a supplemental oral hearing pursuant to 37 C.F.R. § 42.70. Papers 72, 73. Petitioner requests that the supplemental oral hearing be held in-person. Paper 72, 1. The requests are *granted*. As this is a supplemental oral hearing, it will be limited to claims, grounds, and issues to which the parties did not have an opportunity to present at the previous oral hearing held on March 28, 2018. In general, that is limited to (1) the challenged claims and grounds on which the Board instituted trial on April 30, 2018 (Paper 44), and (2) issues concerning Patent Owner's Motion to Amend.

The supplemental oral hearing shall commence at 1:00 PM Eastern Time on October 3, 2018, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The supplemental oral hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the supplemental oral hearing, and the reporter's transcript will constitute the official record of the supplemental oral hearing.

Petitioner requests thirty (30) minutes per side for oral argument. Paper 72, 1. Patent Owner does not request a specific time period. *See generally* Paper 73. Petitioner's request is granted. Each party will have thirty (30) minutes of total time to present arguments. Petitioner bears the burden of proof and persuasion, except for certain motions brought by Patent Owner. Accordingly, Petitioner will proceed first to present its case. Thereafter, Patent Owner may respond to Petitioner's case. Thereafter, Petitioner may use any of its remaining time for rebuttal.

At least five (5) business days prior to the supplemental oral hearing, each party shall serve on the other party any demonstrative exhibit(s) it intends to use

during the supplemental oral hearing. *See* 37 C.F.R. § 42.70(b). At least two (2) business days prior to the supplemental oral hearing, the parties shall provide the demonstrative exhibits to the Board by emailing them to Trials@uspto.gov. As the demonstrative exhibits are not evidence, the parties shall not file any demonstrative exhibits in this case, at least without prior authorization from the Board.

The parties should attempt to work out any objections to demonstratives prior to involving the Board. Should either party disagree with the propriety of any of the opposing party's demonstratives, the party may send, contemporaneously with its own slides two (2) business days prior to the supplemental oral hearing, an email to Trials@uspto.gov including a paper limited to identifying the opposing party's slide(s) objected to. No further argument is permitted in that paper. The Board will then take the objections under advisement, and if the content is inappropriate, it will not be considered. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

The Board asks the parties to confine demonstrative exhibit objections to those identifying egregious violations that are prejudicial to the administration of justice. 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), for guidance regarding the appropriate content of demonstrative exhibits. In general, if the content on a slide cannot be readily associated with an argument made, or evidence referenced, in a substantive paper, it is inappropriate. Conversely, if the content on a slide can be readily associated with an argument made, or evidence referenced, in a substantive paper, it is proper. The best practice is to indicate on each slide where support may be found in a substantive paper and/or an exhibit of record in this proceeding.

The parties are reminded that each presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the supplemental oral hearing to ensure the clarity and accuracy of the reporter's transcript. The parties also should note that at least one member of the panel may be attending the supplemental oral hearing electronically from a remote location, and that if a demonstrative is not filed or otherwise made fully available or visible to all judges at the supplemental oral hearing, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at (571) 272-9797.

The parties also are reminded that, at the supplemental oral hearing, they may only rely upon evidence that has been previously submitted in the proceeding, and is properly of record at the time of the supplemental oral hearing, and may only present arguments that have been previously made in the appropriate submitted substantive papers, which, here, are generally limited to those filed after April 30, 2018, and that are properly of record at the time of the supplemental oral hearing. The parties may also refer to anything relevant to those papers in the Decisions on Institution (Papers 9, 44).

The Board expects lead counsel for each party to be present in person at the hearing. If a 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. Any counsel of record, however, may present the party's arguments.

Requests for audio-visual equipment are to be made at least five business days in advance of the date of the hearing by sending the request to

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Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

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