

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INFOBIONIC, INC.,
Petitioner,

v.

BRAEMAR MANUFACTURING, LLC,
Patent Owner.

Case IPR2017-00796
Patent RE43,767 E

Before PHILLIP J. KAUFFMAN, KEVIN W. CHERRY, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

As set forth in the Scheduling Order, oral argument, if requested, is scheduled for May 1, 2018, in connection with this proceeding. Paper 12, 6. Patent Owner and Petitioner each requests oral argument. Paper 23; Paper 26. The requests are *granted*.

Oral argument will commence at 2:00 PM ET on May 1, 2018. The hearing will be conducted on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia 22314. The hearing will be open to the public for in-person attendance, which will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Each party will have forty five (45) minutes of total argument time. At oral hearing, Petitioner will open the hearing by presenting its arguments. Thereafter, Patent Owner may argue its opposition to Petitioner's arguments and argue its motion to exclude (Paper 25). Petitioner may reserve time for rebuttal arguments and may present arguments in opposition to Patent Owner's motion to exclude. Patent Owner may reserve rebuttal time only to reply to Petitioner's opposition to Patent Owner's motion to exclude. Petitioner bears the ultimate burden of proof that the claims at issue in this review are unpatentable.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least five business days before the hearing and filed no later than the time of the hearing. The Board requests that such exhibits be filed at the Board at least five business days before the hearing to facilitate the panel's preparation. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014), for guidance regarding the appropriate content of demonstrative exhibits.

The parties should strive to resolve any disagreement regarding demonstratives before involving the Board. If, however, the parties are unable to resolve their disagreement, either party may submit an objection to the demonstratives with the Board if filed at least two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented 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.

At least one member of the panel hearing this case will attend the hearing remotely, by video and audio link. The parties are reminded that, during the hearing, the presenter must identify clearly and specifically each demonstrative exhibit referenced (e.g., by slide or screen number) to ensure the clarity and accuracy of the reporter's transcript, and to ensure that the remote judge can follow the argument even if the video connection is disrupted. The parties are requested to speak directly into the microphone, including during initial introduction of counsel.

We understand that Petitioner's lead counsel will not attend the hearing and that its back-up counsel will present its arguments. Paper 23, 1. If Patent Owner anticipates that its lead counsel will not attend the hearing, the parties should notify the Board no later than two business days prior to the hearing. Any counsel of record may present a party's argument. Either party's argument may be divided, but interruptions for change of counsel should be kept to a minimum.

Furthermore, Petitioner requests that its counsel be allowed to use computers and that certain audio-visual equipment be provided. *Id.* The parties are allowed to use computers, but requests for special equipment will not be honored unless presented in a separate communication directed to Trials@uspto.gov not less than five days before the hearing. If the request is not received timely, the equipment may not be available on the day of the hearing.

Accordingly, it is

ORDERED that oral argument for this proceeding shall take place beginning at 2:00 pm Eastern Time on May 1, 2018, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

IPR2017-00796
Patent RE43,767 E

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