

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

CATERPILLAR INC.  
Petitioner,

v.

ERNIE BROOKINS,  
Patent Owner.

---

Case IPR2017-01020  
Patent 7,824,290 B1

---

Before JILL D. HILL, BEVERLY M. BUNTING, and TIMOTHY J.  
GOODSON, *Administrative Patent Judges*.

HILL, *Administrative Patent Judge*.

ORDER  
Oral Hearing  
*37 C.F.R. § 42.70*

IPR2017-01020  
Patent 7,824,290 B1

*Inter partes* review IPR2017-01020 was instituted on September 12, 2017. Paper 30. A Scheduling Order was issued on September 12, 2017, which set the date for oral hearing to June 5, 2018, if hearing were requested by the parties and granted by the Board. Paper 30. Patent Owner requested oral hearing pursuant to 37 C.F.R. § 42.70. Paper 35. Patent Owner's request for oral hearing is *granted*.

**Oral argument will commence at 1:00pm ET, on June 5, 2018, 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, they are requested to contact the Board at least seven days in advance of the hearing to discuss the matter.

Each party will have thirty (30) minutes to present its arguments, for a total hearing length of 60 minutes. Petitioner bears the ultimate burden of proof that the claims at issue in this review are unpatentable. Therefore, at oral hearing, Petitioner will proceed first by presenting its case regarding the challenged claims for which the Board instituted trial. Patent Owner will then argue its opposition to Petitioner's case. Petitioner may reserve rebuttal time to rebut Patent Owner's opposition. Patent Owner may not reserve rebuttal time. Because neither party has proposed to offer live testimony, no live testimony from any witness will be taken at the oral argument. 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.” *Id.*

Demonstrative exhibits in this proceeding are not evidence and are intended only to assist the parties in presenting their oral argument to the panel. Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served on the opposing party at least seven (7) business days before the hearing.

The parties are directed to submit a copy of any demonstrative exhibits by email to [Trials@uspto.gov](mailto:Trials@uspto.gov) at least five (5) business days prior to the hearing. The parties must file any objections to the demonstratives with the Board at least three (3) business days before the hearing. 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. Any objection to demonstrative exhibits that is not timely presented will be considered waived. Additionally, the Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved, the parties are directed to request a conference call with the Board no later than two (2) business days prior to the hearing to resolve any dispute over the propriety of each party’s demonstrative exhibits. The parties are responsible for requesting such a conference sufficiently in advance of the hearing to accommodate this requirement. 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 may refer to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033 (PTAB October 23, 2013)

IPR2017-01020  
Patent 7,824,290 B1

(Paper 118), and *St. Jude Medical, Cardiology Div., Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65) regarding the appropriate content of demonstrative exhibits.

At least one member of the panel will be attending the hearing electronically from a remote location and will only have access to the courtesy copy of the demonstratives provided in advance, as referenced above, 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. 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 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 used, may be provided to the court reporter at the hearing.

Requests for audio-visual equipment are to be made no later than five (5) days in advance of the hearing date via email to [Trials@uspto.gov](mailto:Trials@uspto.gov). If the 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.

The Board expects lead counsel for each party having representation to be present in person at the oral hearing. Here, Petitioner is represented by counsel and Patent Owner is appearing pro se. Lead or backup counsel may present Petitioner's argument. If Petitioner anticipates that its lead counsel will not be attending the oral argument, Petitioner should request a joint

IPR2017-01020  
Patent 7,824,290 B1

telephone conference with the Board no later than two (2) business days prior to the oral hearing to discuss the matter.

It is

ORDERED that oral argument will commence at 1:00 pm ET on June 5, 2018 at the on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.