

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASPHALT PRODUCTS UNLIMITED, INC.,
Petitioner,

v.

BLACKLIDGE EMULSIONS, INC.,
Patent Owner.

Cases IPR2017-01241 and -01242
Patents 7,503,724 B2 and 7,918,624 B2

Before MITCHELL G. WEATHERLY and TIMOTHY J. GOODSON,
Administrative Patent Judges.

WEATHERLY, *Administrative Patent Judge.*

ORDER
Oral Hearing
37 C.F.R. § 42.70

Inter partes reviews IPR2017-01241 and -01242 were instituted on October 24, 2017. IPR2017-01241, Paper 23; IPR2017-01242, Paper 23. A Scheduling Order was issued on the same day, which set the date for oral hearing to August 8, 2018, if hearing were requested by the parties and granted by the Board. IPR2017-01241, Paper 24; IPR2017-01242, Paper 24. Both parties have requested oral hearing pursuant to 37 C.F.R. § 42.70.

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IPR2017-01241, Papers 58, 59; IPR2017-01242, Papers 60, 61. Petitioner's and Patent Owner's requests for oral hearing are *granted*. Although these cases are not consolidated, the hearing for the cases will be held together and a single transcript will be provided for both cases.

The hearing will commence at 1:00 p.m. EDT, on August 8, 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.

Each party will have one hour to present arguments. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in these proceedings are unpatentable. Patent Owner has filed a motion to amend. IPR2017-01241, Paper 33; IPR2017-01242, Paper 33. Petitioner will open the hearing by presenting its case regarding the patentability of any claim at issue in the proceedings including original claims and any claims proposed in Patent Owner's Motion to Amend. Patent Owner will then respond to Petitioner's argument and also argue in support of its motion to amend claims. Petitioner may reserve time to respond to arguments presented by Patent Owner.

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 shall be served on opposing counsel at least seven (7) business days before the oral hearing, and filed as an exhibit no later than the time of the oral hearing. The parties also shall provide a courtesy copy of any demonstrative exhibits to the

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Board at least three (3) business days prior to the oral hearing by emailing the exhibits 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*, IPR2013-00041 (PTAB January 27, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits, which must include citations to the record.

If either party objects to demonstrative exhibits, the parties shall meet and confer in good faith to resolve any such objections. A party may file a paper addressing any unresolved objections to demonstrative exhibits with the Board no later than three (3) business days before the oral hearing. The paper shall include a single sentence per objection stating the basis for that objection and be accompanied by a copy of the allegedly objectionable demonstrative exhibit that identifies the objectionable portion of the exhibit with particularity. No further argument or explanation is permitted. We will consider the objections and, if we deem it necessary, we will further address the objections in a conference call or at the oral hearing. Otherwise, we will reserve ruling on the objections until after the oral 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. If the request is not received timely, the equipment may not be available on the day of the hearing.

We expect lead counsel for each party to be present in person at the oral hearing. However, lead or backup counsel may present the party's argument. If either party anticipates that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone

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

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