

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAUTILUS, INC.,
Petitioner,

v.

ICON HEALTH & FITNESS INC.,
Patent Owner.

Case IPR2017-01363 (Patent 9,403,047 B2);
Case IPR2017-01407 (Patent 9,616,276 B2)
Case IPR2017-01408 (Patent 9,616,276 B2)¹

Before GEORGE R. HOSKINS, TIMOTHY J. GOODSON, and
JAMES A. WORTH, *Administrative Patent Judges*.

WORTH, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

¹ This Order applies to each of the listed cases. These proceedings have not been consolidated. The parties may use a consolidated caption only if a paper contains a footnote indicating that the identical paper has been filed in each proceeding.

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Inter partes reviews IPR2017-01363, -01407, and -01408 were instituted on December 4, 2017. IPR2017-01363, Paper 7; IPR2017-01407, Paper 6; IPR2017-01408, Paper 7. A Scheduling Order was issued on the same day, which set the date for oral hearing to August 29, 2018, if hearing were requested by the parties and granted by the Board. IPR2017-01363, Paper 8; IPR2017-01407, Paper 7; IPR2017-01408, Paper 8. Both parties have requested oral hearing pursuant to 37 C.F.R. § 42.70. IPR2017-01363, Papers 26, 27; IPR2017-01407, Papers 39, 40; IPR2017-01408, Papers 40, 41.

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 on the same day. There will be a single transcript for IPR2017-01363 and a single transcript for IPR2017-01407 and IPR2017-01408. The hearing will commence at 1:00 p.m. EDT, on August 29, 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 transcripts 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.

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 in two of the proceedings. IPR2017-01407, Paper 16; IPR2017-01408, Paper 17.

There will be three hours of argument in total. Each party will have a total of 90 minutes to present arguments, which will be presented in the following sequence. The hearing for IPR2017-01363 will be held first,

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followed by the hearing for IPR2017-01407 and IPR2017-01408. The parties should meet and confer regarding how the time should be allocated between the proceedings. Absent agreement by the parties, the Board will allot each party 30 minutes for IPR2017-01363 and 60 minutes for IPR2017-01407 and IPR2017-01408. Petitioner will open the hearing for each set of *inter partes* reviews by presenting its case regarding the patentability of any claim at issue in the proceedings including original claims and any claims proposed in a 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 these proceedings 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 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

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

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