

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUJIFILM CORPORATION,
Petitioner,

v.

SONY CORPORATION,
Patent Owner.

Case IPR2017-01389, Patent 6,896,959 B2
Case IPR2017-01390, Patent 7,115,331 B2¹

Before JEFFREY W. ABRAHAM and ELIZABETH M. ROESEL,
Administrative Patent Judges.

ABRAHAM, *Administrative Patent Judge.*

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ This Order addresses similar issues in two cases. We exercise our discretion to issue a single Order, to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

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Patent Owner and Petitioner each request an oral hearing pursuant to 37 C.F.R. § 42.70. IPR2017-01389, Papers 25, 26; IPR2017-1390, Papers 25, 26. Each party requests a total of sixty (60) minutes per side for a combined oral argument to address the issues presented in IPR2017-01389 and IPR2017-01390. IPR2017-01389, Papers 25, 26; IPR2017-1390, Papers 25, 26. Having considered the parties' submissions, the parties' requests for oral argument are GRANTED.

Each party will have **60 minutes** of total argument time. Petitioner bears the ultimate burden of proof that the patent claims at issue in these reviews are unpatentable. Therefore, Petitioner will proceed first to present its case with regard to whether the challenged claims are unpatentable. Thereafter, Patent Owner will respond to Petitioner's arguments. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner, but Petitioner may not reserve more than half of its allotted time for rebuttal.

The hearing shall commence at 1:00 pm (EDT) on September 20, 2018. The hearing will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, VA. Seating will be available on a first-come, first-served basis. The Board will provide a court reporter, and the transcript shall constitute the official record of the hearing.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served seven business days before the hearing. Demonstrative exhibits are visual aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide may be marked with the words

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“DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer.

Demonstrative exhibits may not be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the “Board was obligated to dismiss [the petitioner’s] untimely argument . . . raised for the first time during oral argument”). Instead, demonstrative exhibits should cite to the briefs and evidence in the record. Demonstrative exhibits, marked as noted above, should be provided to the Board by emailing them to Trials@uspto.gov at least three business days before the hearing. A hard copy of the demonstratives should also be provided to the court reporter at the hearing.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If such objections cannot be resolved, the parties may file any remaining objections with the Board at least two business days before the oral hearing. The objections should identify with particularity the portions of the demonstrative exhibits that are subject to objection and include a one-sentence statement of the basis for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections until the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party’s argument. If either party anticipates that its lead counsel will not be

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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.

Questions regarding specific audio-visual equipment should be directed to the Board at 571-272-9797. Requests for audio-visual equipment are to be made no later than 5 days in advance of the hearing date. The request is to be sent directly to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

In light of the foregoing, it is:

ORDERED that the oral hearing, conducted pursuant to the procedures outlined above, shall commence at 1:00 PM (EDT) on September 20, 2018.

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