

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOX FACTORY, INC.,
Petitioner,

v.

SRAM, LLC,
Patent Owner.

Case IPR2017-01440
Patent 9,291,250 C1

Before MICHAEL W. KIM, FRANCES L. IPPOLITO and
KEVIN W. CHERRY, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

ORDER
TRIAL HEARING
37 C.F.R. § 42.70

Petitioner and Patent Owner each requested a hearing in this proceeding pursuant to 37 C.F.R. § 42.70(a). Papers 44, 48. The requests are *granted*.

This proceeding will be heard in the afternoon of **September 11, 2018**, beginning at **1:00 p.m.** Each party will have **60 minutes** of total argument time. Petitioner bears the ultimate burden of proof that Patent Owner's patent claims at issue are unpatentable. Also, Petitioner and Patent Owner have each filed a Motion to Exclude Evidence. Therefore, at oral hearing, Petitioner will proceed first to present its case with respect to the challenged claims and grounds with respect to which the Board instituted trial, and any arguments in support of its Motion to Exclude. Petitioner may reserve rebuttal time. Thereafter, Patent Owner will respond to Petitioner's presentation and argue its Motion to Exclude. Patent Owner may also reserve rebuttal time. Petitioner may use any of its remaining time for rebuttal regarding the challenged claims, and for opposing Patent Owner's Motion to Exclude. Patent Owner may then use any of its remaining time for rebuttal regarding its Motion to Exclude. There is no motion to amend to be addressed at the hearing.

New arguments not previously presented in the parties' substantive papers in this proceeding should not be raised at oral hearing.

The hearing will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. In-person attendance will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the hearings, and the reporter's transcripts will constitute the official record of the hearings.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served five business days prior to the hearing. The parties shall confer with each other regarding any objections to demonstrative exhibits, and file the demonstrative

exhibits with the Board at least two business days prior to the hearing. For any issue that cannot be resolved after conferring with the opposing party, the parties may file jointly a one-page list of objections at least two business days prior to the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one sentence) of the reason for each objection. No argument or further explanation is permitted. We will consider the objections and schedule a conference call if necessary. Otherwise, we will reserve ruling on the objections until after the hearing. Any objection to demonstrative exhibits that is not presented timely will be considered waived.

The parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, slip op. at 2–5 (PTAB Oct. 23, 2013) (Paper 118), regarding the appropriate content of demonstrative exhibits. The parties are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearings to ensure the clarity and accuracy of the reporter’s transcripts. The parties also should note that at least one member of the panel will be attending the oral hearing electronically from a remote location. Paper copies of the demonstrative exhibits may be submitted to the panel at hearing time, but are not required. Because of limitations of the audio transmission systems in the hearing room, the presenter may speak only when standing at the hearing room lectern. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible to all of the judges, the parties are invited to contact the Board at (571) 272-9797.

The Board expects lead counsel for Petitioners and Patent Owner to be present at the hearing, although any back-up counsel may make the actual presentation, in whole or in part. If lead counsel for a party will not be in

IPR2017-01440
Patent 9,291,250 C1

attendance at the hearing, the Board should be notified via a joint conference call no later than two days prior to the hearing to discuss the matter.

Requests for audio-visual equipment at the hearing are to be made five days in advance of the hearing date. The requests must be sent to *Trials@uspto.gov*. If the requests are not received timely, equipment may not be available on the day of the hearing.

IPR2017-01440
Patent 9,291,250 C1

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