

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MASABI LTD.,
Petitioner,

v.

BYTEMARK, INC.,
Patent Owner.

Case IPR2017-01449
Patent 8,494,967 B2

Before JOSIAH C. COCKS, NEIL T. POWELL, and
BARRY L. GROSSMAN, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
Oral Argument
37 C.F.R. § 42.5

The parties requested oral argument pursuant to 37 C.F.R. § 42.70. *See* Papers 24, 30.. The requests are granted.

Oral Argument

Oral argument for these proceedings will be conducted on August, 22, 2018, beginning at 9:00 AM Eastern Time, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Each party will have one hour of total argument time.

Petitioner bears the ultimate burden of proof that the claims at issue in this review are unpatentable. Therefore, Petitioner will proceed first to present its argument with regard to the challenged claims remaining in this trial. Thereafter, Patent Owner will respond. After that, Petitioner may make use of any reserved or remaining time of its allocated time responding to Patent Owner. Outstanding Motions may be argued during the moving party's allotted time.

There is a strong public policy interest in making all information presented in these proceedings public, as the review determines the patentability of claims in an issued patent and thus affects the rights of the public. Accordingly, the oral hearing will be open to the public for in-person attendance. Attendance will be accommodated on a first come, first served basis.

The Board will provide a court reporter for the hearing. The reporter's transcript will constitute the official record of the hearing.

Demonstratives

Demonstratives are not required. Demonstratives, if used, are aids in support of oral argument; they are not evidence or exhibits in the review. They will not become part of the official record of this review other than via

the transcript of oral argument. Only demonstratives that are specifically discussed by counsel will be considered as part of the argument.

If demonstratives are to be used during oral argument, they should be exchanged with opposing counsel by email no later than Noon Eastern Time, Monday, August 20, 2018. Copies should also be sent at the same time by email (*not filed* via electronic filing) to the Board. A hard copy of the demonstratives should be provided to the court reporter at the oral argument.

The pages of each demonstrative should be numbered. Demonstratives should be clearly marked as such. For example, each slide of a demonstrative may be marked with the words “DEMONSTRATIVE – NOT EVIDENCE” in the footer. The parties are reminded that the presenter must identify clearly and specifically each demonstrative (e.g., by slide or screen number) referenced during the oral argument to ensure the clarity and accuracy of the transcript.

Demonstratives cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accleron, 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”).

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 Noon Eastern Time, Monday, August 20, 2018. 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.**

IPR2017-01449
Patent 8,494,967 B2

The Board expects 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 hearing, 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.

IPR2017-01449
Patent 8,494,967 B2

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