

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

v.

BLACKBERRY LTD.,
Patent Owner.

Case IPR2017-01619
Case IPR2017-01620
(Patent 8,489,868 B2)¹

Before SALLY C. MEDLEY, ROBERT J. WEINSCHENK, and
AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

¹ This order addresses an issue that is identical in both cases. We exercise discretion to issue one order to be filed in both cases. The parties, however, are not authorized to use this style heading.

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Petitioner and Patent Owner each requested a hearing in the above proceedings pursuant to 37 C.F.R. § 42.70(a). *See* Papers 23, 24. The requests are granted.

The hearing will commence at 1:00 PM Eastern Time on September 17, 2018, and will be conducted at the USPTO Headquarters, Madison Building East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia, 22314. The hearing will be open to the public for in-person attendance that will be accommodated on a first come, first serve basis.

Notwithstanding Patent Owner's request to have separate hearings in which each party is permitted an hour per hearing of argument time, we determine that the issues in the two cases overlap significantly and that a single hearing would be the most appropriate way to address all issues and avoid duplicative arguments and inefficiencies. Accordingly, we shall hold a single hearing where each party will have ninety (90) minutes of total time to present arguments.

Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. Therefore, Petitioner will proceed first to present its case as to the challenged claims, and may reserve rebuttal time. Patent Owner then will respond to Petitioner's presentation. Petitioner then may use the rest of its time to respond to Patent Owner's presentation on all matters.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days prior to the hearing. They shall be filed with the Board no later than five business days prior to the hearing date. The parties must initiate a conference call with the Board at least three business days prior to the hearing to resolve any dispute over the propriety of each party's

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demonstrative exhibits. The parties are directed to *St. Jude Med., Cardiology Div., Inc. v. Board of Regents of the Univ. of Mich.*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), regarding the appropriate content of demonstrative exhibits. *See also CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118) (explaining that the Board has the discretion to limit the parties' demonstratives to pages in the record should there be no easy resolution to objections over demonstratives).

The Board expects lead counsel for each party 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 any party will not be in 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.

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 transcript will be entered in the record of this proceeding.

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.

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