

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION,
Petitioner,

v.

SIEMENS MOBILITY, INC.,
Patent Owner.

IPR2017-01669 (Patent 6,824,110 B2)
IPR2017-01821 (Patent 7,200,471 B2)
IPR2017-02044 (Patent 6,609,049 B1)
IPR2017-02104 (Patent 7,079,926 B2)

Before KRISTEN L. DROESCH, MEREDITH C. PETRAVICK, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

ORDER

Trial Hearing
37 C.F.R. § 42.70

Petitioner and Patent Owner request an oral hearing pursuant to 37
C.F.R. § 42.70(a) in each of the proceedings captioned above. Case

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IPR2017-01669 (“1669 IPR”), Paper 29, Paper 30; Case IPR2017-01821 (“1821 IPR”), Paper 23, Paper 25, Case IPR2017-02044 (“2044 IPR”), Paper 32, Paper 33; and Case IPR2017-02104 (“2104 IPR”), Paper 24, Paper 25. The parties’ requests are *granted*. Although these cases are not consolidated, the hearings will be held together and a single transcript will be provided for all cases.

The hearing for these proceedings will commence at 11:00 a.m. (ET) on November 13, 2018, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearing will be open to the public for in-person attendance, and in-person attendance will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are to contact the Board at least *seven business days* before the hearing to discuss the matter.

Format and Duration of Arguments for 1821 and 2104 IPRs

For Case IPR2017-01821, Petitioner requests that each side have 45 minutes of total argument time, and Patent Owner requests that each side have 30 minutes of total argument time. 1821 IPR, Paper 23, 2, Paper 25, 1. For Case IPR2017-02104, Petitioner requests that each side have 30 minutes of total argument time, and Patent Owner requests that each side have 45 minutes of total argument time. 2104 IPR, Paper 24, 2, Paper 25, 1. Patent Owner requests the oral arguments for Case IPR2017-01821 and Case IPR2017-02104 be held consecutively because the IPRs involve patents that are related to each other. *See* 1821 IPR, Paper 23, 1; 2104 IPR, Paper 24, 1. Patent Owner, however, is opposed to consolidation of the oral arguments

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because of the differences in the scope of the claims and in the asserted grounds between the proceedings. *See* 1821 IPR, Paper 23, 1; 2104 IPR, Paper 24, 1.

Based on the parties' proposals and the record in these cases, we will hear consecutive arguments for Case IPR2017-01821 and Case IPR2017-02104 with a duration of 45 minutes of total argument time for each side for Case IPR2017-01821, and a duration of 45 minutes of total argument time for each side for Case IPR2017-02104.

Format and Duration of Arguments for 1669 and 2044 IPRs

For both Cases IPR2017-01669 and IPR2017-02044, Petitioner requests each side have 30 minutes of total argument time. 1669 IPR, Paper 29, 1; 2044 IPR, Paper 32, 1. Petitioner further requests that the arguments for Cases IPR2017-01669 and IPR2017-02044 occur concurrently. *See* 1669 IPR, Paper 29, 1 n.1; 2044 IPR Paper 32, 1, n.1. Patent Owner requests the oral argument for Cases IPR2017-01669 and IPR2017-02044 be consolidated and requests that each side have 60 minutes of total argument time for the consolidated arguments. 1669 IPR, Paper 30, 1–2; 2044 IPR, Paper 33, 1–2.

The consolidated format of arguments in Cases IPR2017-01669 and IPR2017-02044 is acceptable to the panel, and we will permit 60 minutes of total consolidated argument time for each side.

Accordingly, for each set of oral arguments (i.e., for Case IPR2017-01821, for Case IPR2017-02104, and for the consolidated arguments for Cases IPR2017-01669 and IPR2017-02044), Petitioner will begin by

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presenting its arguments regarding the challenged claims and grounds in both cases, and may reserve argument time for use in rebuttal. Thereafter, Patent Owner will argue its opposition to Petitioner's challenges in both cases, and Patent Owner may reserve argument time for use in sur-rebuttal if it chooses.¹ To the extent Petitioner reserves rebuttal time, Petitioner then may make use of that rebuttal time responding to Patent Owner. Finally, if Patent Owner reserves sur-rebuttal time, Petitioner may use that time. The parties are reminded that arguments made during rebuttal and sur-rebuttal periods must be responsive to arguments the opposing party made in its immediately preceding presentation. The parties are also reminded that during the hearing, the parties "may only present arguments relied upon in the papers previously submitted." Trial Practice Guide August 2018 Update, p. 23.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least *seven business days* before the hearing. The parties also shall file a copy of the demonstratives as an exhibit at least *three business days* prior to the hearing. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties shall meet

¹ See Trial Practice Guide August 2018 Update, p. 20, *available at* www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf (providing that the "Board may also permit patent owners the opportunity to present a brief sur-rebuttal if requested").

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and confer to discuss any objections to demonstrative exhibits. If any issues regarding demonstratives remain unresolved after the parties meet and confer, the parties shall file jointly a one-page list of objections to the demonstrative exhibits at least *three business days* before the hearing. For each objection, the list must identify with particularity the demonstratives subject to the objection and include a short, one-sentence statement explaining the objection. The panel will consider the objections and schedule a conference call if necessary. Otherwise, the panel will reserve ruling on the objections. Any objection to demonstrative exhibits not presented timely will be considered waived.

One or more members of the panel hearing this case will attend the hearing remotely via a videoconferencing device and, therefore, will not be able to view the projection screen in the hearing room. Consequently, the parties are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) or page of the record referenced during the hearing.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. Each party shall provide a hard copy of their demonstratives to the court reporter at the hearing. Requests for audio-visual equipment must be presented in a separate communication directed to Trials@uspto.gov not less than *five business days* before the hearing.

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