

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,
Petitioner,

v.

SUSAN McKNIGHT, INC.,
Patent Owner.

Case IPR2017-01686 (Patent 9,253,973 B2)
Case IPR2017-01687 (Patent 9,066,511 B2)

Before JAMES A. TARTAL, TIMOTHY J. GOODSON, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

ORDER
Requests for Oral Argument
37 C.F.R. § 42.70

IPR2017-01686 (Patent 8,685,048 B2)

IPR2017-01687 (Patent 8,709,027 B2)

United Industries Corporation (“Petitioner”) and Susan McKnight, Inc. (“Patent Owner”) request oral argument in cases IPR2017-01686 and IPR2017-01687 pursuant to 37 C.F.R. § 42.70. Papers 26 and 27, IPR2017-01686; Papers 23 and 24, IPR2017-01687. The requests for oral argument are granted as provided below.

Cases IPR2017-01686 and IPR2017-01687 have not been consolidated or joined, but entail overlapping issues such that oral argument will be provided in a single hearing on October 18, 2018, beginning at 1:00 PM Eastern Time on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, VA.¹ Each party will have a total of 60 minutes of argument time. The parties may allocate their argument time at their discretion over each of the two cases, not to exceed 60 minutes in total for each party. First, Petitioner will present arguments in cases IPR2017-01686 concerning U.S. Patent No. 8,685,048 B2 and IPR2017-01687 concerning U.S. Patent No. 9,066,511 B2, including arguments directed to Patent Owner’s Motion to Amend in IPR2017-01686. Patent Owner then will have the opportunity to respond to Petitioner’s arguments and to present arguments in support of its Motion to Amend in IPR2017-01686. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner’s arguments. Then, Patent Owner may present a brief sur-rebuttal if

¹ Petitioner and Patent Owner have each agreed to a combined hearing for the two cases with Petitioner requesting 45 minutes and Patent Owner requesting 60 minutes. Paper 26, 2–3, and Paper 27, 2, IPR2017-01686; Paper 23, 2–3, and Paper 24, 2, IPR2017-01687.

IPR2017-01686 (Patent 8,685,048 B2)

IPR2017-01687 (Patent 8,709,027 B2)

it has reserved time.² We remind the parties that rebuttal and sur-rebuttal time should only be used to respond to arguments the opposing party made during its directly preceding presentation.

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 will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are requested to contact the Board at least seven days in advance of the hearing to discuss the matter. Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing date and filed no later than the time of the oral argument. The parties also shall provide a courtesy copy of any demonstrative exhibits to the Board at least five business days prior to the hearing by emailing them to Trials@uspto.gov.

The parties must file any objections to the demonstrative exhibits with the Board at least two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstrative exhibits are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and

² We provide a sequence for the two cases, however, we will entertain a joint request of the parties to alter the order in which the two cases are argued if requested by the parties at the outset of the oral argument.

IPR2017-01686 (Patent 8,685,048 B2)

IPR2017-01687 (Patent 8,709,027 B2)

schedule a conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties are reminded that the demonstrative exhibits presented in this case are not evidence and are intended only to assist the parties in presenting their oral argument to the panel.

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 expects that its lead counsel will not be 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. Any special requests for audio-visual equipment should be directed to Trials@uspto.gov. Requests for special equipment will not be honored unless presented in a separate communication not less than five days before the hearing directed to the above email address.

IPR2017-01686 (Patent 8,685,048 B2)

IPR2017-01687 (Patent 8,709,027 B2)

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