

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELITE PERFORMANCE FOOTWEAR, LLC,
Petitioner,

v.

REEBOK INTERNATIONAL LIMITED,
Patent Owner.

IPR2017-01676 (Patent 7,637,035 B1)
IPR2017-01680 (Patent 8,505,221 B2)
IPR2017-01689 (Patent 8,020,320 B2)

Before MEREDITH C. PETRAVICK, KEVIN W. CHERRY, and
JAMES A. WORTH, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

ORDER
Oral Argument
37 C.F.R. § 42.70

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Petitioner and Patent Owner request an oral hearing pursuant to 37 C.F.R. § 42.70(a) in each of the proceedings captioned above. Papers 30¹, 31. The requests are *granted*.

As requested by both parties, we consolidate the oral arguments for these proceedings because of the overlap of issues. Paper 30, 1; Paper 31, 1. The hearing will commence at 9:00 a.m. (ET) on October 25, 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 *three business days* before the hearing to discuss the matter.

Both parties request 90 minutes to present its arguments. Paper 30, 1; Paper 31, 1. As requested, the parties will each have 90 minutes to present its argument for all proceedings.

Petitioner will open the hearing by presenting its arguments regarding the challenged original claims. Thereafter, Patent Owner will argue its opposition to Petitioner's arguments. In addition, Patent Owner may present arguments concerning its Motions to Amend and proposed substitute claims. Petitioner may reserve time to rebut Patent Owner's arguments regarding the challenged original claims and to oppose any arguments concerning the proposed substitute claims and Motions to Amend. Patent Owner may reserve time to rebut Petitioner's opposition to any arguments concerning

¹ IPR2017-01676 is representative and all citations are to IPR2017-01676 unless otherwise noted.

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the proposed substitute claims and Motions to Amend. During the hearing, the parties “may only present arguments relied upon in the papers previously submitted.” Trial Practice Guide August 2018 Update², 23.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least *seven business days* before the hearing. Given the nearness of the oral argument, the parties may agree to service no later than *five 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 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.

² See Trial Practice Guide August 2018 Update, *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”).

IPR2017-01676 (Patent 7,637,035 B1)

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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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