

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STIHL INCORPORATED and ANDREAS STIHL AG & CO. LG,
Petitioner,

v.

ELECTROJET TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2018-00018
Patent 6,955,081 B2

Before JOSEPH A. FISCHETTI, MEREDITH C. PETRAVICK, and
WILLIAM V. SAINDON, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

On December 3, 2018, Petitioner requested an oral hearing on all of the instituted grounds of unpatentability of U.S. Patent No. 6,955,081. Paper 28. Petitioner proposes that one hour each for Petitioner and Patent Owner is sufficient to address the disputed issues in this proceeding.

Patent Owner did not file a request for Oral Argument. Patent Owner's counsel was contacted and Patent Owner stated that the parties had met and conferred regarding Oral Argument but that Patent Owner took the position that no Oral Argument is necessary. Further, Patent Owner stated that it objects to Petitioner's request for one hour allotments for each side. Patent Owner proposes 30 minute allotments for each side.

We grant Petitioner's request for oral hearing, with each side permitted 1 hour to present their arguments, for the reasons that follow.

Under 35 U.S.C. § 316(a)(10), "either party [has] the right to an oral hearing as part of the proceeding." As explained in the Patent Trial Practice Guide, if a party refuses to participate, the Board has the discretion to permit a hearing. Office Patent Trial practice Guide, 77 Fed. Reg. 48,756, 48758 (Aug. 14, 2012). ("Practice Guide"). Patent Owner did not raise any particular reason why it did not want a hearing, other than stating the case can be resolved on the paper record without the oral argument. Balancing Petitioner's statutory right to a hearing with Patent Owner's unexplained request not to have a hearing, we grant the Petitioner's request for oral hearing.

As to the length of the hearing, the Practice Guide, as updated, states that the Board generally provides for one hour of argument per side for a single proceeding, but a party may request more or less time depending on the circumstances. Update to the Trial Practice Guide, 19 (Aug. 2018).

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Patent Owner did not provide for any reason to limit the proceeding to 30 minute allotments for each side, other than to state that 30 minutes would be a sufficient amount of time for each side to present their argument. We are not persuaded of any reason to deviate from the default one hour per side allotment.

The oral hearing will take place on January 14, 2019 on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, Virginia. As discussed above, each side will have one hour to present arguments.

Petitioner bears the ultimate burden of proof that the claims at issue in this review are unpatentable. Petitioner will, therefore, begin by presenting its case regarding the challenged claims and grounds for which the Board instituted trial in the proceeding. Patent Owner will then respond to Petitioner's arguments. Petitioner may reserve time to reply to arguments presented by Patent Owner, and Patent Owner may reserve time to reply to arguments presented by Petitioner during Petitioner's reply time.

The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. The Board will provide a court reporter, and the transcript shall constitute the official record of the hearing.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing. The panel also requests that demonstrative exhibits be filed with the Board at least three business days before the hearing. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), regarding the appropriate content of demonstrative exhibits. The Board expects that the parties will

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meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved the parties must file any objections to demonstratives with the Board at least three business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely presented will be considered waived. 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 five days in advance of the hearing date. The request is to be sent to Trials@uspto.gov, any requests not sent *specifically to that email address* will not be considered timely. If the request is not received timely, the equipment may not be available on the day of the hearing.

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