

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SNAP INC.,
Petitioner,

v.

VAPORSTREAM, INC.,
Patent Owner.

Case IPR2018-00200 (Patent 8,886,739 B2)
Case IPR2018-00312 (Patent 9,306,885 B2)
Case IPR2018-00369 (Patent 9,313,155 B2)
Case IPR2018-00397 (Patent 9,306,886 B2)
Case IPR2018-00404 (Patent 8,935,351 B2)
Case IPR2018-00408 (Patent 9,338,111 B2)¹

Before JUSTIN T. ARBES, STACEY G. WHITE, and
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

WHITE, *Administrative Patent Judge*.

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

¹ We exercise our discretion to issue one Order to be filed in each proceeding. The Parties, however, are not authorized to use this style heading in any subsequent papers.

IPR2018-00200 (Patent 8,886,739 B2)
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IPR2018-00404 (Patent 8,935,351 B2)
IPR2018-00408 (Patent 9,338,111 B2)

The parties have requested oral hearing pursuant to 37 C.F.R. § 42.70 and the Scheduling Order in these proceedings (*see, e.g.*, IPR2018-00200, Paper 23). IPR2018-00200, Papers 33, 35; IPR2018-00312, Papers 31, 33; IPR2018-00369, Papers 31, 33; IPR2018-00397, Papers 28, 29; IPR2018-00404, Papers 30, 31; IPR2018-00408, Papers 28, 29. In each proceeding, Petitioner “requests 30 minutes of time” for argument. *E.g.*, IPR2018-00200, Paper 35. Patent Owner requests that each side be allotted ninety (90) total minutes for argument. *E.g.*, IPR2018-00200, Paper 33. The requests for oral hearing are *granted* as provided below.

Time and Format

Oral argument will begin at **1:00 PM Eastern Time on March 27, 2019**, 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, which will be accommodated on a first come, first served basis.

Each party will have **ninety (90) minutes** total time to present its arguments in the above-captioned proceedings. Petitioner bears the ultimate burden of persuasion that the claims at issue in these proceedings are unpatentable. 35 U.S.C. § 316(e). Petitioner will proceed first to present its case with regard to the claims and grounds on which trial was instituted. Petitioner may reserve no more than half of its time for rebuttal. Thereafter, Patent Owner may respond to Petitioner’s case and may reserve some of its time for sur-rebuttal. Petitioner then may use any of its remaining time for rebuttal regarding the challenged claims. Patent Owner may then present a brief sur-rebuttal, if requested.

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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. No live testimony from any witness will be taken at the oral argument. Any counsel of record may present the party's argument. There will be only one transcript, which will be entered into the record of each case. If an argument is not applicable to all cases, the presenter should clearly state to which case the argument is directed.

Demonstratives

Under 37 C.F.R. § 42.70(b), any demonstrative exhibits must be served on opposing counsel at least seven (7) business days before the hearing. Any argument presented in the demonstrative exhibits must be supported by evidence already of record. The demonstrative exhibits, however, are not evidence. Instead, they are intended to assist the parties in presenting their oral arguments to the Board. Also, the demonstrative exhibits are not a mechanism for making arguments not previously presented. The panel will not consider arguments or evidence appearing only in demonstrative exhibits. 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), for guidance regarding the appropriate content of demonstrative exhibits. In general, if the content on a slide cannot be readily associated with an argument made, or evidence referenced, in a substantive paper, it is inappropriate. The best practice is to indicate on each slide where support

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may be found in a substantive paper and/or an exhibit of record in these proceedings.

Demonstrative exhibits are only an aid to oral argument and are not evidence of record in the proceedings, and should be clearly marked as such. For example, each slide may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. The parties shall file any demonstrative exhibits with the Board at least two (2) business days prior to the hearing.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if any such objections cannot be resolved, the parties must file any objections to the demonstratives with the Board at least two (2) business days before the hearing. Any unresolved objection to demonstrative exhibits that is not timely presented will be considered waived. The objecting party should identify with particularity which portions of the demonstrative exhibits it objects to, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. We will consider the objections and schedule a conference call if necessary. Otherwise, we will reserve ruling on the objections until the hearing or after the hearing.

The parties are reminded that each presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter’s transcript.

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Lead Counsel

The Board expects lead counsel for each party to be present at the oral hearing, although any counsel of record may present the party's argument. If either lead counsel is unable to be present at the hearing, the Board shall be advised by email no later than two (2) business days prior to the oral hearing, and such lead counsel shall be available for a conference call if necessary.

Audio/Visual Equipment Requests

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. **Requests for audio-visual equipment must be made five business days prior to the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.**

ORDER

It is

ORDERED that oral argument for these proceedings shall take place beginning at 1:00 PM Eastern Time on March 27, 2019, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

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