

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORTHOPEDIATRICS CORP.,
Petitioner,

v.

K2M, INC.,
Patent Owner.

Case IPR2018-00429
Case IPR2018-00521
Patent 9,532,816 B2¹

Before LYNNE H. BROWNE, MICHAEL L. WOODS, and
ROBERT L. KINDER, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

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

¹ This Order applies to both of the listed cases. We exercise our discretion to issue one Order to be filed in each case. The parties, however, are not authorized to use this style heading in subsequent papers.

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REQUESTS FOR ORAL ARGUMENT

Both parties have requested oral hearing pursuant to 37 C.F.R. § 42.70. *See* Papers 32, 34. These requests are *granted*.

Oral arguments will commence at 2:00 pm Eastern Standard Time on February 20, 2019, at the USPTO Headquarters in 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. 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 will have one hour of total argument time to present arguments for both proceedings. At oral hearing, Petitioner will open the hearing by presenting its arguments, including arguments for any of its motions. Thereafter, Patent Owner may argue its opposition to Petitioner's arguments and any of its motions. Petitioner may reserve time for rebuttal arguments and may present arguments in opposition to Patent Owner's motion(s). Petitioner bears the ultimate burden of proof that the claims at issue in these *inter partes* reviews are unpatentable.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least five business days before the hearing and filed no later than the time of the hearing. The Board requests that such exhibits be filed at the Board at least five business days before the hearing to facilitate the panel's preparation. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014), for guidance regarding the appropriate content of demonstrative exhibits.

The parties should strive to resolve any disagreement regarding demonstratives before involving the Board. If, however, the parties are unable to resolve their disagreement, either party may submit an objection to the demonstratives with the Board if filed 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 demonstratives are subject to the objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after oral argument.

Additionally, after meeting and conferring, either party may request a pre-hearing conference with the panel to occur no later than three business days prior the oral hearing.

At least one member of the panel hearing the case will attend the reading remotely, by video and audio link. The parties are reminded that, during the hearing, the presenter must identify clearly and specifically each demonstrative exhibit references (e.g., by slide or screen number) to ensure the clarity and accuracy of the reporter's transcript, and to ensure that the remote judge(s) can follow the argument even if the video connection is disrupted. The parties are requested to speak directly into the microphone, including during initial introduction of counsel.

Both parties request use of audio/visual equipment to display demonstrative exhibits. *See* Papers 32, 34. The parties are allowed to use computers, but requests for special equipment will not be honored unless presented in a separate communication directed to Trails@uspto.gov not less than five days before the

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hearing. If the request is not timely received, the equipment may not be available on the day of the hearing. Furthermore, if the demonstratives are filed in a timely manner, the panel members will have copies of the demonstrative exhibits available on their computer screens and display of demonstrative exhibits should not be necessary.

If either party anticipates that its lead counsel will not attend the hearing, that party should notify the Board no later than two business days prior to the hearing. Any counsel of record may present a party's argument. Either party's argument may be divided, but interruptions for change of counsel should be kept to a minimum.

Weather/potential USPTO shutdown: The parties should monitor OPM's official website for shutdowns of the federal government due to weather emergencies (<https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/current-status/>). The parties also should monitor the USPTO and Board official websites for notices related to the ongoing partial federal government shutdown.

Accordingly, it is

ORDERED that oral argument for these proceedings shall take place beginning at 2:00 pm Eastern Standard Time on February 20, 2019, at the USPTO Headquarters in Alexandria, VA.

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