

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAVISTAR, INC.,
Petitioner,

v.

FATIGUE FRACTURE TECHNOLOGY, LLC,
Patent Owner.

Case IPR2018-00853
Patent 7,143,915 B2

Before LINDA E. HORNER, BENJAMIN D. M. WOOD, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

ORDER
Oral Argument
37 C.F.R. § 42.70

I. INTRODUCTION

Petitioner and Patent Owner each requests oral argument under 37 C.F.R. § 42.70. Paper 39; Paper 42.¹ This Order resolves those requests.

We grant the parties' requests for oral argument. *Oral argument shall commence at 10:00 a.m. Eastern Time on June 11, 2019, on the 9th floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.*

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

Petitioner requests 60 minutes of argument time. Paper 39, 1. Patent Owner asserts that 60 minutes of argument time is not required for this proceeding and requests 30 minutes of argument time. Paper 42, 1. Patent Owner also requests that it be permitted to present its case first. *Id.*

Petitioner and Patent Owner each shall have 60 minutes of total time to present arguments. The hearing will proceed as follows. Because Petitioner bears the ultimate burden of persuasion that the claims at issue in this review are unpatentable, Petitioner will open the hearing by presenting its case, including arguments for any of its motions. Patent Owner then may argue its opposition to Petitioner's arguments and any of its motions. Petitioner may reserve rebuttal time (of no more than half its total argument time) to reply to Patent Owner's arguments. Patent Owner may reserve sur-

¹ Although Patent Owner labeled this paper as "Paper No. 43," it is Paper Number 42 in the record.

rebuttal time (of no more than half its total argument time) to respond to Petitioner's rebuttal.

The parties shall serve on opposing counsel demonstrative exhibits no later than June 3, 2019. The parties also shall file the demonstrative exhibits at the Board at least five business days prior to the oral argument to facilitate the panel's preparation. A hard copy of the demonstrative exhibits should be provided to the court reporter at the oral argument.

We remind the parties that demonstrative exhibits are not evidence, but are intended to assist the parties in presenting their oral arguments to the Board. We also remind the parties that demonstrative exhibits are not a mechanism for making arguments not previously addressed in the papers. 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, which must include citations to the record.

To the extent that the parties object to the propriety of any demonstrative exhibits, we expect the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If such objections cannot be resolved, the parties may file objections to demonstratives with the Board at least two business days before the oral argument. The objections should identify with particularity the portions of each demonstrative exhibit subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No further argument or explanation is permitted. We will consider any objections and schedule a conference call if deemed necessary.

Otherwise, we will reserve ruling on the objections until after the oral argument. Any objection to demonstrative exhibits that is not timely presented will be considered waived. During the oral argument, 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.

No live witness testimony shall be taken at the oral argument. The Board expects lead counsel for each party to be present in person at the oral argument. If either party expects that its lead counsel will not be attending the oral argument, the parties should notify the Board no later than two business days prior to the argument. Any counsel of record may present the party's argument. Either party's argument may be divided, but interruptions for change of counsel should be kept to a minimum.

Petitioner and Patent Owner each requests permission to use certain audiovisual equipment. Paper 39, 3; Paper 42, 3. The parties are allowed to use computers. Any requests for audiovisual equipment will not be honored unless presented in a separate communication, directed to Trials@uspto.gov, not less than five business days before the oral argument. If the request is not received timely, the equipment may not be available on the day of the oral argument.

It is hereby:

ORDERED that the parties' requests for oral argument are granted subject to the conditions set forth in this Order; and

FURTHER ORDERED that oral argument for this proceeding shall take place beginning at 10:00 a.m. Eastern Time on June 11, 2019, on the 9th floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

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