

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and AUGUST HOME, INC.,
Petitioner,

v.

MARK W. KILBOURNE,
Patent Owner.

IPR2019-00233
Patent 7,373,795 B2

Before GEORGE R. HOSKINS, RICHARD H. MARSCHALL, and
JASON W. MELVIN, *Administrative Patent Judges*.

HOSKINS, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

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Petitioner and Patent Owner have both requested oral argument in this proceeding pursuant to 37 C.F.R. § 42.70. *See* Papers 27, 28. The requests are *granted*.

Oral arguments will commence at **1:30 p.m.** Eastern Time on **January 30, 2020**, at the **USPTO Headquarters** 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 that will be accommodated on a first-come, first-served basis. The parties are directed to contact the Board at least 10 days in advance of the hearing if there are any concerns about disclosing confidential information. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. To facilitate planning, each party must send an email message to PTABHearings@uspto.gov five days prior to the hearing if the number planning to attend the hearing in-person for its side (attorneys and others) exceeds five people.

Petitioner requests 60 minutes of argument per party; Patent Owner does not specify a requested amount of time for argument. Paper 27; Paper 28, 2. Based on the scope of review in this case, each party will have 60 minutes of argument time. Petitioner will proceed first to present its arguments, then Patent Owner will argue its opposition to Petitioner's case. Petitioner may reserve rebuttal time, in which event any such rebuttal will be presented after Patent Owner's argument. *See* 35 U.S.C. § 316(e); *Aqua Prods., Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017).

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the oral argument. The parties may refer to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033

Paper 118 (PTAB Oct. 23, 2013), regarding the appropriate content of demonstrative exhibits. The parties shall meet and confer to discuss any objections to demonstrative exhibits. The parties shall file their demonstrative exhibits with the Board at least three business days before the hearing. If any issues regarding demonstrative exhibits 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 demonstrative exhibit(s) 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, rulings on the objections will be reserved until the hearing or after the hearing. Any objection to demonstrative exhibits not presented timely will be considered waived. The parties are reminded that the demonstrative exhibits presented in this proceeding are not evidence and are intended only to assist the parties in presenting their oral argument to the panel.

Each party shall provide a hard copy of its demonstrative exhibits to the court reporter at the hearing. At least one judge will be participating remotely via a videoconferencing device and will not be able to view the projection screen in the hearing room. The parties are reminded that the presenter should 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 transcript.

The Board generally expects lead counsel for each party to be present in person at the oral hearing. Any counsel of record may present the party's argument as long as that counsel is present in person.

If a party requires a different arrangement, the party should contact the Board as directed below with their request. For example, a party may request that counsel be permitted to present arguments remotely from an alternative USPTO location. The available locations include the Texas Regional Office in Dallas, Texas; the Rocky Mountain Regional Office in Denver, Colorado; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the Silicon Valley Office in San Jose, CA. To request that counsel be permitted to present arguments from a remote location, a party should send an email message to PTABHearings@uspto.gov at least ten business days or as soon as practical prior to the hearing and provide a short statement of reasons for the request. The Board will notify the parties if the request is approved. Approval of the request does not guarantee that a panel member will be present at the remote location.

A party may also request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. To request remote video viewing, a party must send an email message to PTABHearings@uspto.gov ten business days prior to the hearing, indicating the requested location and the number planning to view the hearing from the remote location. The Board will notify the parties if the request for video viewing is granted. Note that it may not be possible to grant the request due to the availability of resources.

Any special requests for audio-visual equipment should be directed to PTABHearings@uspto.gov. Any such special request must be presented in a communication to the indicated email address not less than five (5) days before the hearing. For example, Petitioner has requested “the ability to use audio/visual equipment to display demonstrative exhibits and evidence of

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record, including the use of a computer, projector and screen for a PowerPoint presentation, an overhead projector (“Elmo”), and other visual display.” Paper 28, 3. Patent Owner has requested “the ability to use video equipment (including use of a computer, projector and screen) to display exhibits potentially including demonstrative exhibits, during oral argument. Paper 27, 2. These requests should be made to the indicated email address. Additionally, counsel should note that the remotely participating judge(s) will have access to each party’s demonstrative exhibits for reference during the hearing, but will not be able to see what is projected onto the screen in the hearing room, whether via computer connection or Elmo projection.

A party may also indicate any special requests related to appearing at an in-person oral hearing, such as a request to accommodate physical needs that limit mobility or visual or hearing impairments, and indicate how the PTAB may accommodate the special request. Any such request must be presented in an email communication directed to PTABHearings@uspto.gov not less than five (5) days before the hearing.

It is:

ORDERED that oral argument for this proceeding will commence at **1:30 p.m.** Eastern Time on **January 30, 2020**, at the **USPTO Headquarters** on the ninth floor of **Madison Building East, 600 Dulany Street, Alexandria, Virginia.**

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