

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUNA BABY ESSENTIALS, INC. and
NUNA INTERNATIONAL B.V.,
Nuna Baby,

v.

BRITAX CHILD SAFETY, INC.,
Britax.

Case IPR2019-00663
Patent 9,187,016 B2

Before LINDA E. HORNER, SCOTT A. DANIELS, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
Oral Argument
37 C.F.R. § 42.5

The parties requested oral argument pursuant to 37 C.F.R. § 42.70. *See* Papers 15, 16. Patent Owner requested 60 minutes of total time to present its case and Petitioner requested an equal amount of time. The requests for 60 minutes of time, for each party, are granted.

Our Scheduling Order in this case set the date of oral argument, if requested, as June 2, 2020. Paper 9 (Scheduling Order). The statutory deadline for issuing a final written decision in this proceeding is September 4, 2020.

On March 15, 2020, the USPTO announced:

Out of an abundance of caution for the health and safety of the public and USPTO employees, all USPTO offices will be closed to the public beginning Monday, March 16, 2020 until further notice. USPTO offices will remain open for employees, contractors, and those with access badges. Unless otherwise notified, USPTO operations will continue without interruption. Patent and trademark application deadlines and other deadlines are not extended.

See <https://www.uspto.gov/about-us/news-updates/uspto-offices-closed-public>. Therefore, as discussed in detail below, oral argument in this proceeding will occur by video.

Oral Argument

Oral arguments will commence at 1:00 p.m. (ET) on Tuesday, June 2, by video. 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. Petitioner will argue first and may present arguments regarding the challenged claims. Patent Owner will then have the opportunity to respond to Petitioner's arguments. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments.

Lastly, Patent Owner may use any time it has reserved for sur-rebuttal to respond to Petitioner's rebuttal arguments. No other arguments will be heard.

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

If at any time during the proceeding, you encounter technical or other difficulties that fundamentally undermine your ability to adequately represent your client, please let the panel know immediately, and adjustments will be made.¹

To facilitate planning, each party must contact PTAB Hearings at (571) 272-9797 five (5) business days prior to the oral hearing date to receive video set-up information. As a reminder, all arrangements and the expenses involved with appearing by video, such as the selection of the facility to be used from which a party will attend by video, must be borne by that party. If a video connection cannot be established, the parties will be provided with dial-in connection information, and the oral hearing will be conducted telephonically.

If one or both parties would prefer to participate in the oral hearing telephonically, they should notify PTAB Hearings at the above telephone number five (5) business days prior to the hearing to receive dial-in connection information.

Demonstratives

Demonstratives are not required. Demonstratives, if used, are aids in support of oral argument; they are not evidence or exhibits in the review.

¹ For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

They will not become part of the official record of this review other than via the transcript of oral argument. Only demonstratives that are specifically discussed by counsel will be considered as part of the argument.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served at least (7) seven business days before the hearing. Thus, the parties shall serve on opposing counsel demonstrative exhibits no later than Noon Eastern Time, Friday, May 22, 2020. Copies should also be sent at the same time by email (not filed via electronic filing) to the Board at PTABHearings@uspto.gov.

The pages of each demonstrative should be numbered. Demonstratives should be clearly marked as such. For example, each slide of a demonstrative may be marked with the words “DEMONSTRATIVE – NOT EVIDENCE” in the footer. Demonstratives cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (noting that the “Board was obligated to dismiss [the petitioner’s] untimely argument . . . raised for the first time during oral argument”). To ensure compliance with this requirement, each demonstrative should, if reasonably feasible, also include citations to the record for each argument or evidence included in a demonstrative.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if any objections cannot be resolved, the unresolved objections must be filed with the Board at least (2) 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 and portions thereof are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if the Board deems necessary. Otherwise, the Board will reserve ruling on the objections until after the hearing.

Any special requests for audio-visual equipment should be directed to PTABHearings@uspto.gov. A party may also indicate any special requests related to appearing at a video oral hearing, such as a request to accommodate visual or hearing impairments, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication not less than five (5) days before the hearing.

No New Evidence or Arguments

The parties are reminded that, at the oral argument, a party may only rely upon evidence that has been submitted previously in this proceeding, and may only present arguments relied upon in papers submitted previously. Evidence that is subject to a motion to exclude may be discussed at the hearing. The Board will rule on motions to exclude evidence in its Final Written Decision.

Lead Counsel

The Board expects lead counsel for each party to be present by video at the oral argument. However, lead or backup counsel may present the party's argument. If either party anticipates that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone

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