

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC., INSTAGRAM, LLC,
and WHATSAPP INC.,
Petitioner

v.

BLACKBERRY LIMITED,
Patent Owner.

IPR2019-00706
Patent 9,349,120 B2

Before MICHAEL R. ZECHER, MIRIAM L. QUINN, and
AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 U.S.C. § 42.70

We instituted *inter partes* review in the above-identified case and issued a Scheduling Order setting June 10, 2020 as the date for oral hearing if requested by the parties under 37 C.F.R. § 42.70 and granted by the Board. Both parties have now requested oral hearing (*see* Papers 25, 26), and those requests are *granted*.

Oral arguments will commence at **11:00 a.m.** Eastern time on **June 10, 2020**, and will be conducted by **video only**. We grant **60 minutes** of oral argument time to each party, for a total of two hours.

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.

Each party **must** contact PTAB Hearings at (571) 272-9797 **five business days prior to the oral hearing date** to receive video set-up information. All arrangements and the expenses involved with appearing by video, such as the selection of the facility 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 hearing telephonically, they should notify PTAB Hearings at the above telephone number five business days prior to the hearing to receive dial-in connection information.

If at any time during the proceeding, a party encounters technical or other difficulties that fundamentally undermines the ability to adequately

represent a client, the party should let the panel know immediately, and adjustments will be made.¹

Because Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable, Petitioner will present its case first, but may reserve up to half of its argument time for rebuttal. Patent Owner will then respond to Petitioner's case, and also will have the ability to reserve up to half of its time. Petitioner may then use any reserved time for rebuttal, and Patent Owner may present a sur-rebuttal with any reserved time.

The Board expects lead counsel for each party to be present by video at the oral hearing. Any counsel of record may present the argument.

Pursuant to 37 C.F.R. § 42.70(b), any demonstrative exhibits must be served no later than seven business days before the hearing date. They must be filed with the Board no later than five business days before the hearing date. Demonstrative exhibits are merely a visual aid for use at the hearing and are not evidence and may not introduce new arguments or evidence.

The parties shall meet and confer to discuss any objections to demonstrative exhibits at least three business days before the hearing. If any issues regarding demonstrative exhibits remain unresolved after the parties meet and confer, the parties may file jointly a one-page list of objections to the demonstrative exhibits at least two business days before the hearing. For each objection, the list must identify with particularity the demonstrative exhibits that are subject to the objection and include a short, one-sentence statement explaining the objection. Any objection to demonstrative exhibits that is not presented timely will be considered waived. The panel will

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

consider the objections and schedule a conference call if necessary, and my reserve ruling on the objections until after the oral hearing. For further guidance regarding the appropriate content of demonstrative exhibits, the parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014). See also *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 118 (PTAB Oct. 23, 2013) (explaining that the Board has the discretion to limit demonstratives to pages in the record should there be no easy resolution to objections over demonstratives).

Not less than five days before the hearing, a party may direct any special requests related to appearing, such as a request to accommodate visual or hearing impairments, to PTABHearings@uspto.gov, and should indicate how the Board might accommodate the request.

The panel will have access to all papers filed with the Board, including demonstratives. During the oral hearing, the parties are advised to identify clearly and specifically each demonstrative referenced (e.g., by slide or screen number) to ensure the clarity and accuracy of the court reporter's transcript. In addition, the parties are advised to identify themselves each time they speak. Furthermore, because the remote nature of the oral hearing may also result in audio lag, the parties are advised to observe a pause prior to speaking, so as to avoid speaking over others.

Members of the public may request to listen in on this oral hearing and, if resources are available, the Board generally expects to grant such requests. If either party objects to the Board granting such requests, for example, because confidential information may be discussed, the party must

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notify the Board by contacting PTABHearings@uspto.gov at least five business days prior to the oral hearing date.

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