

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC,
Petitioner,

v.

VELOS MEDIA, LLC,
Patent Owner.

Case IPR2019-00757
Patent 9,930,365 B2

Before MONICA S. ULLAGADDI, JASON MELVIN, and
AARON W. MOORE, *Administrative Patent Judges*.

ULLAGADDI, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

We instituted *inter partes* review in the instant proceeding on September 11, 2019. Paper 7. The Scheduling Order set June 16, 2020 as the date for oral argument. Paper 8. Petitioner filed a request for oral argument pursuant to 37 C.F.R. § 42.70(a). Paper 28. Patent Owner also filed a request for oral argument pursuant to 37 C.F.R. § 42.70(a). Paper 29. These requests are *granted*.

Oral arguments will commence at 9:00 AM ET on June 16, 2020, by video. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Patent Owner requests a bifurcated hearing in which non-confidential issues are presented in one portion of the hearing, and confidential issues are presented in a separate portion of the hearing. Paper 29, 2. In view of that request, the public will not be allowed live access to the hearing, and the parties shall ensure that anyone with access through their connections during discussion of confidential information be entitled to view such confidential information under the terms of the Board's default Protective Order filed as Exhibit 1022. During the remainder of the discussion (non-confidential information), a party's counsel may allow access to additional persons through the counsel's connection, but counsel will be responsible for ensuring that any such person would not have access to confidential information discussed at the hearing. Any confidential portions of the hearing will be identified during the hearing, and the subsequently entered transcript will be public except for those portions.

The parties are directed to contact the Board at least 10 days in advance of the hearing if there are any *additional* concerns about disclosing confidential information.

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 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 business days prior to the hearing to receive dial-in connection information.

Each party shall have 60 minutes of total time to present arguments. Petitioner bears the ultimate burden of proof that the claims at issue are unpatentable. Therefore, Petitioner will argue patentability first and may present arguments with regard to the challenged claims, reserving no more than half its time for rebuttal and for the confidential portion of the hearing. Patent Owner will then have the opportunity to respond to Petitioner's arguments, reserving no more than half its time as desired, and present any issues for which it bears the ultimate burden. Next, Petitioner may use any

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

time it has reserved for rebuttal to respond to Patent Owner's arguments. Then, Patent Owner may use any time it has reserved for sur-rebuttal to respond to Petitioner's arguments on patentability. The confidential portion of the hearing will proceed in a similar fashion, to be decided at the outset of the hearing.

Per the Consolidated Trial Practice Guide, either party may request a pre-hearing conference (Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019 (found at the following link to the USPTO website <https://www.uspto.gov/TrialPracticeGuideConsolidated>)). Requests for a pre-hearing conference must be made by May 29, 2020. To request such a conference, an email should be sent to Trials@uspto.gov including several dates and times of availability for one or both parties, as appropriate, that are generally no later than three (3) business days prior to the oral hearing. Please refer to the Guide for more information on the prehearing conference.

Demonstrative exhibits are visual aids to oral argument and not evidence, and shall be clearly marked as such. For example, each slide may be marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. Demonstrative exhibits may not 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"). Instead, demonstrative exhibits should cite to the briefs and evidence in the record. The parties shall serve any demonstrative exhibits on opposing counsel at least seven (7) business days before the hearing. 37 C.F.R. § 42.70(b). The parties shall also provide a copy of any demonstrative

exhibits to the Board no later than three (3) business days before the hearing by emailing them to PTABHearings@uspto.gov. Notwithstanding 37 C.F.R. § 42.70(b), the parties shall not file demonstrative exhibits in these proceedings.

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

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.

Please unmute yourself only when speaking. 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, the remote nature of the oral hearing may also result in an audio lag, and so the parties are advised to observe a pause prior to speaking, so as to avoid speaking over others.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.