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Paper 17
Entered: September 3, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORP.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

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IPR2019-01026
Patent 6,993,049 B2

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Before SALLY C. MEDLEY, JEFFREY S. SMITH, and GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

ORDER
Trial Hearing
*37 C.F.R. § 42.70*

We instituted trial in this proceeding. Paper 7. A Scheduling Order set the oral hearing for September 10, 2020, if requested by the parties and granted by the Board. Paper 8. Both parties have requested oral hearing. Papers 13, 14. The requests are granted according to the terms set forth below.

Oral arguments will commence at 1:00 PM Eastern Time, on September 10, 2020, by video. The parties are directed to contact the Board as soon as possible 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 contact PTAB Hearings at PTABHearings@uspto.gov 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 email address five business days prior to the hearing to receive dial-in connection information.

Each party will have forty five (45) minutes total time to present its arguments per proceeding. Petitioner bears the ultimate burden of persuasion that the claims at issue are unpatentable. 35 U.S.C. § 316(e). Petitioner will therefore open the hearing by presenting its arguments

regarding patentability. Patent Owner may then respond to Petitioner's arguments. Each party may reserve up to half of its allocated time to respond to arguments presented by the opposing party, with Petitioner replying first, followed by Patent Owner.

Under 37 C.F.R. § 42.70(b), any demonstrative exhibits should have been served on opposing counsel at least seven (7) business days before the hearing. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. The parties shall file demonstrative exhibits with the Board at least three business days prior to the hearing.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if any such objections cannot be resolved, the parties must file any objections to the demonstratives with the Board at least two business days before the hearing. The objections should identify with particularity which portions of the demonstratives are subject to objection, include a copy of the objected-to portions, and include a short, one-sentence statement of the reason for each objection. No argument or further explanation is permitted. We will consider the objections and schedule a conference call if necessary. Otherwise, we will reserve ruling on the objections until the hearing or after the hearing. Any objection that is not timely presented will be considered waived.

We note that demonstrative exhibits are only an aid to oral argument and are not evidence of record in the proceeding, and should be clearly marked as such. For example, each slide may be marked with the words

"DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. The parties also are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) or page of the record referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript.

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.

The Board has established the "Legal Experience and Advancement Program," or "LEAP," to encourage advocates before the Board to develop their skills and to aid in succession planning for the next generation. The Board defines a LEAP practitioner as a patent agent or attorney having three (3) or fewer "substantive" oral hearing arguments in any federal tribunal, including PTAB, *and* seven (7) or fewer years of experience as a licensed attorney or patent agent.

Parties are encouraged to participate in the Board's LEAP program. Either party may request that a LEAP practitioner participate in the program and conduct at least a portion of the party's oral argument. In exchange, the Board will grant up to fifteen (15) minutes of additional oral argument time to that party, depending on the length of the proceeding and the PTAB's hearing schedule. A party should submit a request no later than five (5) business days before the hearing, by email to the Board at PTABHearings@uspto.gov.[1]

[1] Additionally, a LEAP Verification Form shall be filed by the LEAP practitioner prior to the hearing, confirming eligibility for the program. The LEAP practitioner should file the completed form into the record.

A LEAP practitioner may conduct the entire oral argument or may share time with other counsel, provided that the LEAP practitioner is offered a meaningful and substantive opportunity to argue before the Board. The party has the discretion as to the type and quantity of oral argument that will be conducted by the LEAP practitioner.[2] Moreover, whether the LEAP practitioner conducts the argument in whole or in part, the Board will permit more experienced counsel to provide some assistance to the LEAP practitioner, if necessary, during oral argument, and to clarify any statements on the record before the conclusion of the oral argument. Importantly, the Board does not draw any inference about the importance of a particular issue or issues, or the merits of the party's arguments regarding that issue, from the party's decision to have (or not to have) a LEAP practitioner argue.

In instances where an advocate does not meet the LEAP eligibility requirements, either due to the years of experience as a licensed attorney/patent agent or the number of "substantive" oral hearing arguments, but nonetheless has a basis for considering themselves to be in the category of advocates that this program is intended to assist, the Board encourages argument by such advocates during oral hearings. Even though additional argument time will not be provided in such circumstances, as with LEAP, a party may request to share time with counsel and the Board will permit more experienced counsel to provide some assistance, if necessary, during oral

[2] Examples of the issues that a LEAP practitioner may argue include claim construction argument(s), motion(s) to exclude evidence, or patentability argument(s) including, e.g., analyses of prior art or objective indicia of non-obviousness.

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