

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEW U LIFE CORPORATION,
Petitioner,

v.

AXCESS GLOBAL SCIENCES, LLC,
Patent Owner.

IPR2019-01141
Patent 6,613,356 B1

Before GEORGIANNA W. BRADEN, JENNIFER MEYER CHAGNON,
and MICHAEL A. VALEK, *Administrative Patent Judges*.

VALEK, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

Pursuant to 37 C.F.R. § 42.70 and the Scheduling Order (Paper 9), Petitioner has requested an oral hearing in the above referenced case. Paper 19. Petitioner's request for oral hearing is *granted*.

Oral argument will commence at **10:00 AM (ET) on Tuesday, September 1, 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.

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 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.

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

As Petitioner requested, each party will have 45 minutes, total, to present its arguments. *See* Paper 19, 2. Petitioner will open the hearing and may present arguments regarding the challenged claims for which the Board instituted trial.² Patent Owner will then respond to Petitioner’s arguments and may also present argument regarding its motion to exclude (Paper 20). Petitioner may reserve rebuttal time (of no more than half its total argument time) to respond to Patent Owner’s arguments. Patent Owner may reserve time for a brief sur-rebuttal. *See* Office Consolidated Trial Practice Guide, November 2019 Edition, 83 (“TPG”).³

At least seven business days prior to the hearing, each party shall serve on the other party any demonstrative exhibit(s) it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). At least five business days before the hearing, the parties shall provide the demonstrative exhibits to the Board by emailing them at PTABHearings@uspto.gov. The parties shall not file any demonstrative exhibits in this case, without prior authorization from the Board.

Demonstrative exhibits used at the oral hearing are aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. *See* TPG, 84. Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d

² Patent Owner has withdrawn its Motion to Amend. Paper 18. Thus, the Board expects both parties to focus their arguments on the claims and grounds for which trial was instituted. *See* Institution Decision (Paper 8).

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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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 must cite to evidence in the record.

The parties should attempt to work out any objections to demonstratives prior to involving the Board. Should either party disagree with the propriety of any of the opposing party’s demonstratives, the party may send, two business days prior to the hearing, an email to Trials@uspto.gov limited to identifying the opposing party’s slide(s) objected to and a brief sentence as to the general basis of the objection. No further argument is permitted in that email. The Board will then take the objections under advisement, and if the content is inappropriate, it will not be considered. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The Board asks the parties to confine demonstrative exhibit objections to those identifying egregious violations that are prejudicial to the administration of justice. 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. In general, if the content on a slide cannot be readily associated with an argument made, or evidence referenced, in a substantive paper, it is inappropriate. The best practice is to indicate on each slide where support may be found in a substantive paper and/or an exhibit of record in this proceeding.

The parties are reminded that each presenter must 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 reporter's transcript. As noted above, each member of the panel will be attending the hearing electronically from a remote location. If a demonstrative exhibit is not emailed to the Board or otherwise made fully available or visible to all judges at the hearing, that demonstrative exhibit will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at (571) 272-9797.

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 business days before the hearing.

Please unmute yourself only when speaking. The panel will have access to all papers filed with the Board, including demonstratives (provided by email as discussed above). 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

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