

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MARVELL SEMICONDUCTOR, INC.
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

IPR2019-01350
Patent 7,016,676 B2

Before JAMESON LEE, KEVIN F. TURNER, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

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

On February 4, 2020, we instituted *inter partes* review in the instant proceeding and issued a Scheduling Order setting the date for oral argument to November 12, 2020. *See* Papers 9, 10. The parties filed requests for oral argument pursuant to 37 C.F.R. § 42.70(a). Papers 16, 19. Both parties request an oral argument conducted by remote videoconferencing. *Id.*

Petitioner requests that a joint hearing be conducted for IPR2019-01349 and IPR2019-01350, with each party given 75 minutes of total argument time for the two proceedings, and Patent Owner agrees. *Id.*

Oral arguments will commence at **1:00 PM Eastern Time on November 12, 2020, by video**. **A joint oral argument will be held for IPR2019-01349 and IPR2019-01350, with each party given 75 minutes of total argument time** for the two proceedings. 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. 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 hearing, counsel encounter technical or other difficulties that fundamentally undermine counsel's ability to adequately represent a party, the problem should be brought to the attention of the panel 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 argument 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

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

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 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 side will receive 75 minutes of total presentation time to present all arguments. *See Consolidated Trial Practice Guide (November 2019) at 81, available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=>; see also 84 Fed. Reg. 64,280 (Nov. 21, 2019) (“The Board expects to ordinarily provide for an hour of argument per side for a single proceeding, but a party may request more or less time depending on the circumstances of the case.”).* Petitioner will open the hearing by presenting its case regarding the unpatentability of the challenged claims. Patent Owner then will respond to Petitioner’s presentation. Petitioner may reserve rebuttal time (of no more than half their total presentation time) to reply to Patent Owner’s arguments. Patent Owner may reserve sur-rebuttal time (of no more than half its total presentation time) to respond to Petitioner’s rebuttal. *See Consolidated Trial Practice Guide (November 2019) at 83.*

No live testimony from any witness will be taken at the oral argument unless authorized by further order. If a party wishes to present live testimony during oral argument, that party should confer with the other side and the parties shall jointly request a conference call with the Board in

which to make the request no later than three business days from the date of this Order, together with a proposed plan for the remainder of this proceeding.

For other issues, either party may request a pre-hearing conference by the date set forth in our Scheduling Order. *See Consolidated Trial Practice Guide* (November 2019) at 82; *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019). 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 business days prior to the oral hearing. Please refer to the Office Trial Practice Guide for more information on the pre-hearing conference.

At least seven (7) 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). 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 Office Consolidated Trial Practice Guide*, November 2019 Edition, 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 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. Demonstrative exhibits, marked as noted above, should be filed with the Board in accordance with 37 C.F.R. § 42.70(b) at least five (5) business days before the hearing.

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 parties' demonstratives, the party may send, two (2) business days prior to the hearing, an email to Trials@uspto.gov including a paper limited to identifying the opposing parties' slide(s) objected to and a brief sentence as to the general basis of the objection. No further argument is permitted in that paper. 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 may 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*, Case 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, all members 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

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