

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DYNAMICS INC.,
Patent Owner.

IPR2020-00499 Patent 8,827,153
IPR2020-00502 Patent 10,032,100
IPR2020-00504 Patent 10,223,631
IPR2020-00505 Patent 10,255,545

Before TREVOR M. JEFFERSON, GEORGIANNA W. BRADEN, and
JON M. JURGOVAN, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

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Date and Time of Hearing

On August 12, 2020, we entered a Decision to Institute a trial proceeding in IPR2020-00499. Paper 41. A Scheduling Order set the date for oral hearing, if requested by either party, as May 12, 2021. Paper 42, 12. Pursuant to 37 C.F.R. § 42.70, both parties have requested a consolidated oral argument for IPR2020-00499 with related proceedings IPR2020-00502, IPR2020-00504, and IPR2020-00505. *See* Papers 20, 21. Petitioner requests seventy-five (75) minutes per side, while Patent Owner requests “no more than ninety (90) minutes per side” for the hearing. *Id.* The Board grants Petitioner’s and Patent Owner’s requests for oral argument.

Accordingly, oral argument for this proceeding will commence at **1:00 PM Eastern Time/12:00 PM Central Time**, on **May 12, 2020** and will be conducted **by video**. The parties are directed to contact the Board at least **ten (10) business days** before 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 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. If any technical problems arise during the hearing, the panel will adjust the parties’ argument time accordingly.

To facilitate planning, each party must contact PTAB Hearings at PTABHearings@uspto.gov **five (5) business days** before the oral hearing date to receive video set-up information. As a reminder, all arrangements

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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.

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 hearing by video, 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) business days** before the hearing.

If one or both parties would prefer to participate in the hearing telephonically, they should notify PTAB Hearings at the above email address **five (5) business days** before the hearing to receive dial-in connection information.

Allotted Argument Time

Each party will have **ninety (90) minutes of** total time to present arguments for its case. Petitioner bears the ultimate burden of proof that the claims at issue are unpatentable by a preponderance of the evidence. 35 U.S.C. § 316(e). Therefore, Petitioner will proceed first to present its case with regard to the challenged claims and grounds on which we instituted trial in this proceeding and may reserve no more than half its time for rebuttal. Thereafter, Patent Owner will respond to Petitioner's case and present the issues for which it bears the ultimate burden. After that,

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Petitioner may use the rest of its time for its rebuttal, responding to Patent Owner's specific arguments presented at the oral hearing. If Patent Owner has reserved time for sur-rebuttal and up to the time remaining, Patent Owner may present sur-rebuttal argument. The parties are reminded that arguments made during rebuttal and sur-rebuttal periods must be responsive to arguments the opposing party made in its immediately preceding presentation. The parties also are reminded that during the hearing, the parties "may only present arguments relied upon in the papers previously submitted." Trial Practice Guide August 2018 Update, p. 23. Consult the November 2019 Consolidated Trial Practice Guide¹ for information on requests for live testimony. The parties may also address any pending motions during their respective presentations. No live testimony from any witness will be taken at the oral hearing.

The Board generally expects lead counsel for each party to be present by video at the hearing. Any counsel of record, however, may present a party's argument as long as that counsel is present by video. If either party expects that its lead counsel will not attend the hearing, the parties should initiate a joint telephone conference with the Board no later than **two (2) business days** before the hearing to discuss the matter.

Demonstrative Exhibits

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served on opposing counsel at least **seven (7) business days** before the hearing. 37 C.F.R. § 42.70(b). The parties also shall file a courtesy copy of the

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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demonstratives as an exhibit to the Board at least **three (3) business days** prior to the hearing (or five business (5) days prior to a pre-hearing conference if one is scheduled). The parties are reminded that under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been so filed.

Demonstrative exhibits used at the hearing are visual aids to oral argument, **they are not evidence and are intended only to assist the parties in presenting their oral argument to the Board.** For example, each slide of a demonstrative exhibit may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. 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. 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 meet and confer to discuss any objections to demonstrative exhibits. If any issues regarding demonstratives remain unresolved after the parties meet and confer, the parties shall file jointly a one-page list of objections to the demonstrative exhibits at least **three (3) business days** before the hearing if no pre-hearing conference is requested,

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