

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC.,
ZTE (USA) INC.,
AND
ZTE CORPORATION,
Petitioner,

v.

3G LICENSING S.A.,
Patent Owner.

IPR2020-01157 (Patent 7,274,933 B2)
IPR2020-01158 (Patent 7,460,868 B2)
IPR2020-01159 (Patent 7,596,375 B2)
IPR2020-01160 (Patent 8,275,374 B2)
IPR2020-01161 (Patent 8,472,955 B2)
IPR2020-01162 (Patent 8,948,756 B2)

Before TERRENCE W. MCMILLIN, AMANDA F. WIEKER,
MONICA S. ULLAGADDI, and RUSSELL E. CASS,
*Administrative Patent Judges.*¹

WIEKER, *Administrative Patent Judge.*

ORDER
Setting Oral Argument
37 C.F.R. § 42.70

¹ This is not an expanded panel. A three-judge panel is assigned to each proceeding. The parties are not authorized to use this caption.

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ORAL ARGUMENT

A. *Time and Format*

Pursuant to Petitioner's and Patent Owner's requests (*see, e.g.*, IPR2020-01162,² Papers 39, 40), oral argument will commence at **1:00 pm Eastern Time on December 15, 2021**, by videoconference. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Each of Petitioner's requests seek a combined hearing for all captioned proceedings, with each party allocated ninety (90) minutes of time to present arguments. IPR2020-01162, Paper 40, 2. Patent Owner's requests also seek a combined hearing for all captioned proceedings, with each party allocated sixty (60) minutes of time to present arguments. IPR2020-01162, Paper 39, 2–3.

Upon considering these requests, we will conduct a combined hearing for all captioned proceedings, with each party granted a total of ninety (90) minutes to present argument addressing all six captioned proceedings. However, the hearing will proceed in two segments, to accommodate the different panels for these proceedings. Namely, the hearing will proceed first with respect to IPR2020-01158, IPR2020-01159, IPR2020-01160, and IPR2020-01161, with Administrative Judges Wieker, Ullagaddi, and Cass

² Similar papers appear in each captioned proceeding.

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presiding.³ Sixty (60) minutes is allocated for arguments directed to these four proceedings. Then, after a short break, the hearing will proceed with respect to IPR2020-01157 and IPR2020-01162, with Administrative Judges McMillin, Wieker, and Cass presiding. Thirty (30) minutes is allocated for arguments directed to these two proceedings.⁴

In each segment of the hearing, Petitioner will open by presenting its case regarding the challenged claims for which the Board instituted trial, and Patent Owner's proposed substitute claims. Thereafter, Patent Owner will respond to Petitioner's argument. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. In accordance with the Consolidated Trial Practice Guide ("CTPG"), issued in November 2019, Patent Owner may request to reserve time for a brief sur rebuttal. *See* CTPG 83. Given the overlap in these proceedings, statements made during the hearing are applicable to all captioned proceedings, unless it is explicitly noted that a statement applies to a specific proceeding only.

The parties may request a pre hearing conference in advance of the hearing. *See id.* at 82. "The purpose of the pre hearing conference is to afford the parties the opportunity to preview (but not argue) the issues to be discussed at the oral hearing, and to seek the Board's guidance as to

³ Administrative Patent Judge McMillin will observe this segment of the hearing, but is not a member of the panel in IPR2020-01158, IPR2020-01159, IPR2020-01160, or IPR2020-01161.

⁴ Administrative Patent Judge Ullagaddi will observe this segment of the hearing, but is not a member of the panel in IPR2020-01157 or IPR2020-01162.

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particular issues that the panel would like addressed by the parties.” *Id.* If either party desires a pre hearing conference, the parties should jointly contact the Board at Trials@uspto.gov at least seven (7) business days before the hearing date to request a conference call for that purpose.

B. Demonstratives

As set forth in 37 C.F.R. § 42.70(b), demonstratives shall be served on opposing counsel at least seven (7) business days before the hearing date and filed no later than December 10, 2021.

Demonstratives are not a mechanism for making new arguments. Demonstratives are also not evidence, and will not be relied upon as evidence. Rather, demonstratives are visual aids to a party’s oral presentation regarding arguments and evidence previously presented and discussed in the papers. Accordingly, demonstratives shall be clearly marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (holding that the Board is obligated under its own regulations to dismiss untimely argument “raised for the first time during oral argument”). “[N]o new evidence may be presented at the oral argument.” CTPG 85–86; *see also St. Jude Med., Cardiology Div., Inc. v. The Bd. of Regents of the Univ. of Mich.*, IPR201300041, Paper 65, 2–3 (PTAB Jan. 27, 2014) (explaining that “new” evidence includes evidence already of record but not previously discussed in any paper of record).

Furthermore, because of the strict prohibition against the presentation of new evidence or arguments at a hearing, it is strongly recommended that

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each demonstrative includes a citation to a paper in the record, which allows the Board to easily ascertain whether a given demonstrative contains “new” argument or evidence or, instead, contains only that which is developed in the existing record.

Due to the nature of the Board’s consideration of demonstratives and the opportunity afforded for the parties to reach an agreement without involving the Board, the Board does not anticipate that objections to demonstratives are likely to be sustained. Nevertheless, to the extent that a party objects to the propriety of any demonstrative, the parties shall meet and confer in good faith to resolve any objections to demonstratives prior to filing the objections with the Board. If such objections cannot be resolved, the parties may file any objections to demonstratives with the Board no later than the time of the hearing. The objections shall identify with particularity which portions of the demonstratives are subject to objection and include a one (1) sentence statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider any objections, and may reserve ruling on the objections.⁵ Any objection to demonstratives that is not timely presented will be considered waived.

Finally, the parties are reminded that each presenter should identify clearly and specifically each paper (e.g., by slide or screen number for a demonstrative) referenced during the hearing to ensure the clarity and

⁵ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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