

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE DATA COMPANY TECHNOLOGIES INC.,
Petitioner,

v.

BRIGHT DATA LTD.,
Patent Owner.

IPR2022-00135
Patent 10,257,319 B2

Before THOMAS L. GIANNETTI, SHEILA F. McSHANE, and
RUSSELL E. CASS, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

ORDER
Granting Requests for Oral Argument
37 C.F.R. § 42.70(a)

I. ORAL ARGUMENT

A. Time and Format

The Scheduling Order for this proceeding provided that an oral argument would be conducted on March 1, 2023, if requested by the parties and granted by the Board. Each party requests 60 minutes of argument time. Paper 33, 1; Paper 34, 1. Both parties request that the oral hearing be held remotely by videoconference. Paper 33,1; Paper 34, 2.

We grant the requests. Each party will have 60 minutes of total argument time. Petitioner will argue first and may present its argument and may reserve no more than half of its time for rebuttal. Patent Owner will argue second and may present its arguments and may reserve no more than half of its time for sur-rebuttal. Petitioner may present rebuttal to respond to arguments made by Patent Owner. Patent Owner may present sur-rebuttal to respond to arguments made by Petitioner.

Oral argument will commence at 11:00 AM ET on Wednesday, March 1, 2023, 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.

The parties shall confer and notify the Board at least three business days prior to the oral hearing by email to PTABHearings@uspto.gov if the parties anticipate that confidential information will need to be disclosed at the oral hearing. We note that the Board favors public access to oral hearings to provide a complete record for public access, as well as for appellate review.

The parties may request a pre-hearing conference in advance of the hearing. *See Consolidated Trial Practice Guide*¹ (“CTPG”), 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 hearing, and to seek the Board’s guidance as to 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 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 business days before the hearing date and filed three days prior to the hearing. A copy of the demonstratives should also be sent by email to PTABHearings@uspto.gov.

Demonstratives are not a mechanism for making new arguments. Demonstratives also are 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. Accelaron, 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

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

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argument.” CTPG 85; *see also St. Jude Med., Cardiology Div., Inc. v. The Bd. of Regents of the Univ. of Mich.*, IPR2013-00041, 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 each demonstrative include 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.

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 one day prior to the hearing. The objections shall identify with particularity which portions of the demonstratives are subject to objection (and should include a copy of the objected-to portions) and include a one 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.² 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

² If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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demonstrative) referenced during the hearing to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically.

C. Presenting Counsel

The Board generally expects lead counsel for each party to be present at the hearing. *See* CTPG 11. Any counsel of record may present the party's argument as long as lead counsel is also present.

D. Video or Telephonic Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least five business days prior to the 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 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 hearing will be conducted telephonically.

If one or both parties would prefer to participate in the hearing telephonically, they must contact the Board at PTABHearings@uspto.gov at least five business days prior to the hearing date to receive dial-in connection information.

Counsel should unmute only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. During the hearing, the parties are reminded to identify clearly and specifically each paper referenced (e.g., by slide or screen number for a demonstrative) to ensure the clarity and accuracy of the court reporter's transcript and for the

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