

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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L'ORÉAL USA, INC.,  
Petitioner,

v.

LIQWD, INC.,  
Patent Owner.

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Case PGR2018-00025  
Patent 9,668,954 B2

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Before TONI R. SCHEINER, CHRISTOPHER M. KAISER, and  
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

MAJORS, *Administrative Patent Judge*.

ORDER  
Granting Request for Oral Argument  
*37 C.F.R. § 42.70*

Petitioner and Patent Owner have requested oral hearing pursuant to 37 C.F.R. § 42.70 and the Scheduling Order in these proceedings. Papers 54 and 57. The parties' requests for oral hearing are *granted* as provided below. This Order supersedes the earlier Order Granting Request for Oral Argument (Paper 68), which earlier order set oral argument for April 23, 2019. The date for oral argument has been rescheduled based on Patent Owner's unopposed request, and the Board's ability to accommodate that request.

### **Time and Format**

Oral argument will begin at **1:00 PM Eastern Time on May 20, 2019**, on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, Virginia. The argument be held in **Hearing Room A**. The hearing will be open to the public for in-person attendance, which will be accommodated on a first come, first served basis.

Each side will have a total of 60 minutes to present its arguments, and each party may use this time as they deem appropriate subject to the following limitations. Petitioner will open the hearing and may present arguments regarding the challenged claims for which the Board instituted trial. Patent Owner will then respond to Petitioner's arguments. Petitioner and Patent Owner may each reserve up to 15 minutes of rebuttal time and sur-rebuttal time respectively for arguments presented during the hearing.<sup>1</sup>

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<sup>1</sup> The parties will also be permitted to argue, if they choose, during their allotted time that certain argument and/or evidence should or should not be considered in these proceedings under 37 C.F.R. § 42.23(b), or should be excluded pursuant to the parties respective motions to exclude. *See, e.g.*, Papers 51, 55, 58.

If the parties anticipate disclosing during oral argument information that is alleged to be confidential under the terms of the Protective Order, the parties should segregate, if at all possible, such disclosure of confidential information to a certain portion of their respective presentations during oral argument. Further to this point, the parties should inform the Board during the hearing, and before such disclosure is made, that they intend to argue a point or cite an exhibit that requires disclosure of confidential or potentially confidential information so that the Board may take appropriate action to safeguard such information. Moreover, the Board requests the parties consider whether it is possible to make their arguments during oral argument without specific disclosure of confidential information (e.g., referring to the evidence generally, and directing the Board's attention to documents and/or exhibits to which the Board and parties have access, but which are presently filed subject to a motion to seal). Objections during the other party's portions of oral argument are generally not expected, except to the extent necessary to preserve information as confidential. These efforts will assist the Board in maintaining, to the full extent possible, this proceeding as open to the public, consistent with our rules. 37 C.F.R. § 42.14.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. There transcript will be entered when available, subject to resolution of any issues as to confidentiality of portions of the transcript.

### **Demonstratives**

At least seven (7) business days before the hearing date, 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). Notwithstanding 37 C.F.R.

§ 42.70(b), each party shall, instead of filing, provide a courtesy copy of the demonstrative exhibits to the Board at least three full business days prior to the hearing by emailing them to [Trials@uspto.gov](mailto:Trials@uspto.gov).

Any argument presented in the demonstrative exhibits must be supported by evidence already of record. The demonstrative exhibits, however, are not evidence. Instead, they are intended to assist the parties in presenting their oral arguments to the Board. Also, the demonstrative exhibits are not a mechanism for making arguments not previously presented. The panel will not consider arguments or evidence appearing only in demonstrative exhibits. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB January 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

Due to the nature of the demonstrative exhibits, the panel does not anticipate that objections to such exhibits would likely be sustained. Nevertheless, to the extent that there is any objection to the propriety of the demonstrative exhibits, the parties shall meet and confer in good faith to resolve any issue. If the parties cannot resolve the issues regarding the demonstrative exhibits on their own, the objecting party may file a one-page list of its objections to the demonstrative exhibits with the Board at least three full business days before the hearing. The objecting party should identify with particularity which portions of the demonstrative exhibits it objects to, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. The panel will schedule a conference call if necessary. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

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. When introducing a demonstrative slide relating to information subject to a motion to exclude or strike or other objection, counsel will briefly note that status on the oral record.

### **Lead Counsel**

The Board expects lead counsel for each party to be present at the oral hearing, although any counsel of record may present the party's argument. If either lead counsel is unable to be present at the hearing, the Board shall be advised by email no later than two business days prior to the oral hearing, and such lead counsel shall be available for a conference call if necessary.

### **Audio/Visual Equipment Requests**

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. **Requests for audio-visual equipment must be made five business days prior to the hearing date. The request is to be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov). If the request is not received timely, the equipment may not be available on the day of the hearing.**

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