

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

Case PGR2018-00029 (Patent 9,636,583 B2)
Case PGR2018-00036 (Patent 9,669,308 B2)
Case PGR2018-00039 (Patent 9,597,594 B2)
Case PGR2018-00047 (Patent 9,770,659 B2)¹

Before MICHAEL W. KIM, LYNNE H. BROWNE, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

ORDER
Trial Hearing

37 C.F.R. § 42.70

¹ This Order addresses the same issues in these post grant reviews. Therefore, we issue one Order to be filed in all of the cases. The parties, however, are not authorized to use this style of filing in subsequent papers. For the purposes of clarity and expediency, all citations are to PGR2018-00029 as representative.

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In all identified cases, Patent Owner and Petitioner each request oral hearing pursuant to 37 C.F.R. § 42.70. Papers 36, 37. Upon consideration, the requests for oral hearing are *granted*.

These cases are currently scheduled to be heard on June 19–21, 2019. Paper 22. For PGR2018-00029 and -00047 collectively, Patent Owner requests sixty (60) minutes per side, while Petitioner requests ninety (90) minutes per side. Papers 36, 37. For PGR2018-00036, Patent Owner requests sixty (60) minutes per side, while Petitioner requests up to one (1) hour per side. PGR2018-00036, Papers 20, 22. For PGR2018-00039, Patent Owner requests sixty (60) minutes per side, while Petitioner requests up to one (1) hour per side. PGR2018-00039, Papers 31, 32.

Given the similarities and overlapping issues in the four identified cases, the panel does not consider all the requested time over three days to be warranted. Accordingly, we exercise our discretion, and grant a total of six (6) hours over two days for all of the cases collectively. The panel requests that the parties confer and jointly propose two of the above listed days to hold hearings, with a maximum of four hours on any given day. The parties should file a joint paper indicating their agreed upon dates and time limits. The panel further requests that the parties confer and jointly propose how the cases should be organized, and in what order they would like to present them. The parties are to provide the details of those proposals in the above-referenced joint paper. If no agreement can be reached on any of the above issues, the parties must jointly request a conference call no later than June 12, 2019.

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All hearings will be located on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearings will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the hearings and the reporter's transcript will constitute the official record of the hearings.

As the party with the burden of proof, Petitioner will proceed first to present its case with regard to the challenged claims on which the Board instituted trial. Thereafter, Patent Owner may respond to Petitioner's case. Thereafter, Petitioner may use any of its remaining time for rebuttal regarding the challenged claims. Finally, Patent Owner may use any of its remaining time for a sur-rebuttal. *See* Trial Practice Guide Update (Aug. 2018) ("The Board may also permit patent owners the opportunity to present a brief sur-rebuttal if requested.").

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). At least two (2) business days prior to the hearing, the parties shall file the demonstrative exhibits with the Board. *See id.* The parties should attempt to work out any objections to demonstratives prior to involving the Board. The parties must initiate a conference call with the Board at least three (3) business days before the hearing to present any objection regarding the propriety of any demonstrative exhibit. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The Board asks the parties to confine demonstrative exhibit objections to those identifying egregious

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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.

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. The parties also should note that at least one member of the panel may be attending the hearing electronically from a remote location, and that if a demonstrative is not filed or otherwise made fully available or visible to all judges at the hearing, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at (571) 272-9797.

The Board expects lead counsel for each party to be present in person at the hearing. If a party anticipates that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two business days prior to the oral hearing to discuss the matter. Any counsel of record, however, may present the party's argument.

Requests for audio-visual equipment are to be made at least five business days in advance of the date of the hearing by sending the request to 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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It is ORDERED that Petitioner and Patent Owner confer and file a joint paper concerning the indicated dates, time limits, and proceeding organization, no later than June 12, 2019; and

FURTHER ORDERED that parties must contact the Board no later than June 12, 2019 if no agreement can be reached.

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