

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, LLC,
Patent Owner.

Cases PGR2018-00055
Patent 9,687,744 B2

Before LYNNE H. BROWNE, HYUN J. JUNG, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

We instituted post-grant review in the above-referenced case. Paper 11. The Scheduling Order initially set June 25, 2019, as the date for oral argument, if requested. Paper 12. Pursuant to 37 C.F.R. § 42.70, each party filed a request for oral argument. Papers 28, 30. As stated in each request (Papers 28, 30), an email from the Board dated April 12, 2019, rescheduled the date for oral argument (Due Date 7) to June 27, 2019. Each party requested 60 minutes of argument time per side. Papers 28, 30. The requests are *granted*.

The hearing will commence at **10:00 AM Eastern Time**, on **Thursday, June 27, 2019**, and will be conducted at the **USPTO Central Headquarters in Alexandria, Virginia** (the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, 22314). At least one judge may participate in the hearing via videoconference from a remote location; counsel for the parties, however, must appear in person. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

Each party will have sixty (60) minutes of total oral argument time. Petitioner will argue first and may present arguments regarding the challenged claims. Patent Owner will then have the opportunity to respond to Petitioner's arguments. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Lastly, Patent Owner may use any time it has reserved for sur-rebuttal to respond to Petitioner's rebuttal arguments. No other arguments will be heard.

The Board will provide a court reporter, and the reporter's transcript will constitute the official record of the hearing. The hearing transcript will be entered in the record of this proceeding.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served at least (7) seven business days before the hearing. Demonstrative exhibits are visual aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Demonstrative exhibits may not be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accleron, 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. Demonstrative exhibits, marked as noted above, should be filed in accordance with 37 C.F.R. § 42.70(b) at least five (5) business days before the hearing.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if any objections cannot be resolved, the unresolved objections must be filed with the Board at least (2) two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstratives and portions thereof are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if the Board deems necessary. Otherwise, the Board will rule on the objections at the hearing.

To aid in the preparation of an accurate transcript, each party shall provide a paper copy of any demonstratives to the court reporter on the day

of the oral argument. Such paper copies shall not become part of the record of this proceeding. The parties are reminded that, during the hearing, the presenter should identify clearly each demonstrative exhibit (e.g., by slide or screen number) to ensure the clarity and accuracy of the reporter's transcript and permit any judge participating from a remote location to follow the arguments.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party's argument as long as that counsel is present in person. If either party expects 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 (2) business days prior to the oral hearing to discuss the matter.

A party may request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. The available locations include the Texas Regional Office in Dallas, Texas; the Rocky Mountain Regional Office in Denver, Colorado; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the Silicon Valley Office in San Jose, CA. To request remote video viewing, a party must send an email message to Trials@uspto.gov ten business days prior to the hearing, indicating the requested location and the number planning to view the hearing from the remote location. The Board will notify the parties if the request for video viewing is granted. Note that it may not be possible to grant the request due to the availability of resources.

Any special requests for audio-visual equipment should be directed to Trials@uspto.gov. A party may also indicate any special requests related to appearing at an in-person oral hearing, such as a request to accommodate

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physical needs that limit mobility or 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) days before the hearing. If the request is not received timely, the equipment may not be available on the day of the hearing.

It is

ORDERED that oral argument will commence at 10:00 AM ET on June 27, 2019.

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