

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVEPOINT, INC.,
Petitioner,

v.

ONETRUST, LLC,
Patent Owner.

Case PGR2018-00056
Patent 9,691,090 B1

Before BART A. GERSTENBLITH, CARL M. DEFRANCO, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

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

Both AvePoint, Inc. (“AvePoint”) and OneTrust, LLC (“OneTrust”) request an oral hearing pursuant to 37 C.F.R. § 42.70(a). Papers 33, 35. The requests are *granted*.

The hearing will commence at 1:00 PM Eastern Time, on June 28, 2019, at Madison Building East (9th floor), 600 Dulany Street, Alexandria, Virginia. The hearing will be open to the public, and seating will be accommodated on a first-come, first-served basis. The Board will provide a court reporter at the hearing, and the reporter's transcript will constitute the official record of the hearing. At the beginning of the hearing, each party will provide the court reporter with a hard copy of any demonstrative exhibits. The parties are directed to refrain from disclosing any confidential information during the hearing or including any confidential information in a demonstrative exhibit. If the parties have any concern about disclosing confidential information, they must contact the Board at least three (3) business days before the hearing to discuss the matter.

Each party will have a total of sixty (60) minutes to present their case. The parties are responsible for allocating their total presentation time, including argument on any pending motions or procedural matters. A party may only present argument and evidence at the hearing for which there is proper foundation in the record. AvePoint, as petitioner, bears the ultimate burden of proof that the claims as challenged in the petition are unpatentable. Thus, AvePoint will proceed first by having up to sixty (60) minutes to present its case as to why the challenged claims are unpatentable. OneTrust will follow with up to sixty (60) minutes to respond. Before commencing their presentation, a party may reserve time for rebuttal.

At least five (5) business days prior to the hearing, each party shall serve on the other party any demonstrative exhibits it intends to use during the hearing. See 37 C.F.R. § 42.70(b). Demonstrative exhibits are not evidence and may not introduce new evidence or arguments. Demonstrative

exhibits 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 should be submitted to the Board *no later than three (3) business days before the hearing*. Any demonstrative exhibit not served on a party or submitted to the Board may not be used during the hearing.

The parties must meet and confer in good faith to resolve any objections to the propriety of any demonstrative exhibit. Any objection that is not timely presented will be deemed waived. If any objections to demonstrative exhibits cannot be resolved, the objecting party may file a statement of objections with the Board *at least three (3) business days before the hearing*. The statement of objections should identify with particularity each demonstrative exhibit subject to objection and include a brief statement (no more than a few sentences) of the reason for such objection. No argument or further explanation is permitted. Nor is a party permitted to file a response to the statement of objections.

The Board will consider the statement of objections and schedule a conference call if necessary. Otherwise, the Board will reserve ruling on the objections until the time of the hearing. The parties are advised to limit objections to demonstrative exhibits to egregious violations that are prejudicial to the administration of justice. Generally, if the content of a slide cannot be readily associated with an argument made, or evidence referenced, in a substantive paper of record, the slide is inappropriate. Conversely, if the content of a slide can be readily associated with an argument made, or evidence referenced, in a substantive paper, it is proper.

Ideally, parties should indicate on each slide where support may be found in a substantive paper and/or exhibit of record.

At least one judge on the panel will be hearing the case from a remote location and may not be able to view the projection screen in the hearing room. Thus, during the hearing, counsel must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced to ensure clarity and accuracy of the transcript. The parties may only rely upon evidence that has been previously submitted in the proceeding and may only present arguments that have been previously made in the submitted papers. No new evidence or arguments may be presented at the hearing. Nor will live testimony be permitted at the hearing.

The Board expects lead counsel for each party to be present in person at the hearing. Any counsel of record, however, may present the party's case. If either party expects that its lead counsel will not be attending the hearing, the parties should initiate a joint conference call with the Board no later than three (3) business days prior to the hearing to discuss the matter.

Any special requests for audiovisual equipment should be directed to Trials@uspto.gov *no later than five (5) business 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 hereby

ORDERED that, subject to the procedures set forth above, the parties' requests for oral hearing are *granted*; and

FURTHER ORDERED that an oral hearing, conducted in accordance with the procedures set forth above, shall commence at 1:00 PM Eastern Time on June 28, 2019.

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