

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

20/20 VISION CENTER, LLC,  
Petitioner,

v.

DIGITALOPTOMETRICS LLC,  
Patent Owner.

---

PGR2018-00100  
Patent 9,980,644 B2

---

Before PATRICK M. BOUCHER, CHRISTOPHER G. PAULRAJ, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

ORDER  
Trial Hearing  
*37 C.F.R. § 42.70*

Patent Owner and Petitioner request an oral argument in PGR2018-00100, pursuant to 37 C.F.R. § 42.70. Papers 22, 23. Petitioner does not request any particular amount of time (Paper 23, 1), but Patent Owner “requests no more than one hour per side of oral argument time.” Paper 22, 1.

Having considered the parties’ submissions, the parties’ requests for oral argument are GRANTED. Oral arguments will commence at 12:00 PM Eastern Time on January 23, 2020, at the USPTO Headquarters on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. The parties are directed to contact the Board at least 10 days in advance of the hearing if there are any concerns about disclosing confidential information. The Board will provide a court reporter for the hearing, and the reporter’s transcript will constitute the official record of the hearing. To facilitate planning, each party must send an email message to [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov) five days prior to the hearing if the number planning to attend the hearing in-person for its side (attorneys and others) exceeds five people.

Each side will have 40 minutes, total, to present its arguments. *See* Papers 22, 23. The total hearing time will be no longer than 80 minutes. Petitioner bears the ultimate burden of proof that Patent Owner’s claims at issue in this review are unpatentable. *See* 35 U.S.C. § 326(e). Accordingly, Petitioner will open the hearing by presenting its case regarding the patentability of the challenged claims. After Petitioner’s presentation, Patent Owner will respond to Petitioner’s arguments. Petitioner may reserve up to half of its time for rebuttal to respond to Patent Owner’s arguments.

PGR2018-00100  
Patent 9,980,644 B2

Thereafter, Patent Owner may use any of its remaining time for sur-rebuttal, to respond to Petitioner's rebuttal arguments.

Per the August 2018 update to the Office Patent Trial Practice Guide (incorporated in the November 2019 Consolidated Trial Practice Guide), either party may request a pre-hearing conference. Office Patent Trial Practice Guide, August 2018 Update, 83 Fed. Reg. 39,989 (Aug. 13, 2018) (found at the following link to the USPTO website: [https://www.uspto.gov/sites/default/files/documents/2018\\_Revised\\_Trial\\_Practice\\_Guide.pdf](https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf)). Requests for a pre-hearing conference must have been made no later than DUE DATE 6 provided in the Scheduling Order, which was January 2, 2020. No such requests were made for this proceeding.

The parties are reminded that, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven (7) business days before the hearing date. The parties also shall provide a courtesy copy of any demonstrative exhibits to the Board at least five business days prior to the hearing by emailing them to [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov). Notwithstanding 37 C.F.R. § 42.70(b), the parties shall not file any demonstrative exhibits in this proceeding without prior authorization from the Board. *See* 37 C.F.R. § 42.5(b). A hard copy of the demonstrative exhibits should be provided to the court reporter at the hearing.

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, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. Demonstrative exhibits used at the oral hearing are aids to oral argument and not evidence, and should be clearly marked as such. For example, each slide of a demonstrative exhibit may be

marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Acceleron, 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”).

The parties must meet and confer in good faith to discuss and resolve any objections to demonstrative exhibits. Any party with unresolved objections must file such objections with the Board at least two (2) business days before the hearing, if no pre-hearing conference is requested, or two (2) business days before a pre-hearing conference, if one is scheduled. The objections should identify with particularity which demonstrative exhibits 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, if no pre-hearing conference is requested, may schedule a conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

At least two members of the panel may attend the hearing from a remote location by use of two-way audio-visual communication equipment and may not be able to view the projection screen in the hearing room. Specifically, documents presented on the ELMO projector are not visible to judges at a remote location, so please plan accordingly. If a demonstrative exhibit is not made available or visible to the judge(s) presiding over the hearing remotely, that demonstrative will not be considered. Each presenter

must identify clearly and specifically each demonstrative exhibit (e.g., by slide number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript and for the benefit of the judge(s) presiding over the hearing remotely. Because of limitations of the audio transmission systems in our hearing rooms, the presenter may speak only when standing at the hearing room lectern.

The Board generally 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.

A party may request that counsel be permitted to present arguments remotely from an alternative USPTO location. The available locations include the USPTO headquarters in Alexandria, Virginia; 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 that counsel be permitted to present arguments from a remote location, a party should send an email message to [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov) at least ten business days or as soon as practical prior to the hearing and provide a short statement of reasons for the request. The Board will notify the parties if the request is approved. Approval of the request does not guarantee that a panel member will be present at the remote location.

A party may also request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. To request remote video viewing, a party must send an email message to [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov) ten business days prior to the hearing, indicating the requested location and the number planning to view the hearing from the

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.