

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEX RECREATION CORP.,
Petitioner,

v.

TEAM WORLDWIDE CORP.,
Patent Owner.

PGR2019-00015
Patent 9,989,979 B2

Before GEORGE R. HOSKINS, JAMES J. MAYBERRY, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

MAYBERRY, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

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Petitioner, Intex Recreation Corp., and Patent Owner, Team Worldwide Corp., each requested oral hearing in PGR2019-00015. Papers 31, 32. These requests are hereby *granted*, subject to the procedures and requirements below.

Oral arguments will commence at 10:00 am Eastern Time on February 11, 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 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.

Petitioner bears the ultimate burden of persuasion that the claims at issue in this proceeding are unpatentable. Petitioner will proceed first to present its arguments. Patent Owner then will respond to Petitioner's presentation. Petitioner may reserve rebuttal time (of no more than half of its total presentation time) to reply to Patent Owner's arguments. Patent Owner may reserve sur-rebuttal time (of no more than half its total presentation time) to respond to Petitioner's rebuttal. *See Consolidated Trial*

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Practice Guide 83 (Nov. 2019), *available at* <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf> (“Trial Practice Guide”).

A pre-hearing conference call will be held upon request. The request must be made no later than **January 28, 2020**. Prior to making such a request, Petitioner and Patent Owner shall meet and confer and, when possible, send a joint request to the Board with an agreed-upon set of limited issues for discussion. A request for a prehearing conference may be made by email to Trials@uspto.gov, and shall include a list of issues to be discussed during the call and proposed times for the call, which should be no later than three (3) business days prior to the hearing.

At least one member of the panel may attend the hearing electronically from a remote location and will not be able to view the projection screen in the hearing room. Thus, if a demonstrative exhibit is not made available in advance or visible to the judge(s) presiding over the hearing remotely, that demonstrative exhibit will not be helpful. 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 and for the benefit of the judge(s) presiding over the hearing remotely. A hard copy of the demonstratives, if used, should be provided to the court reporter at the hearing. Also, Petitioner and Patent Owner are reminded that, at the oral arguments, they “may only present arguments relied upon in the papers previously submitted.” Trial Practice Guide 86. “Except in cases where the Board permits live testimony, no new evidence may be presented at the oral argument.” *Id.*

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served on the opposing party or parties seven (7) business days prior to the hearing. Demonstrative exhibits used at the 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. Trial Practice Guide 84.

The Board expects that Petitioner and Patent Owner will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved, Petitioner and Patent Owner are directed to request a conference call with the Board no later than three (3) business days prior to the hearing to resolve any dispute over the propriety of demonstrative exhibits. Petitioner and Patent Owner are responsible for requesting such a conference sufficiently in advance of the hearing to accommodate this requirement. Any objection to demonstrative exhibits that is not presented timely will be considered waived. The Board asks Petitioner and Patent Owner to confine demonstrative exhibit objections to those identifying egregious violations that are prejudicial to the administration of justice. Petitioner and Patent Owner may refer to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033 (PTAB October 23, 2013) (Paper 118), and *St. Jude Medical, Cardiology Div., Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), regarding the appropriate content of demonstrative exhibits. Petitioner and Patent Owner are directed to file their demonstrative exhibits, marked as noted above, at least three (3) business days prior to the hearing.

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 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 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 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 PTABHearings@uspto.gov. A party may also indicate any special requests related to appearing at an in-person oral hearing, such as a request to

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