

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RED DIAMOND, INC.,
Petitioner,

v.

SOUTHERN VISIONS, LLP,
Patent Owner.

PGR2019-00045
Patent 10,071,852 B2

Before CHRISTOPHER L. CRUMBLEY, JEFFREY W. ABRAHAM, and
CHRISTOPHER C. KENNEDY, *Administrative Patent Judges*.

KENNEDY, *Administrative Patent Judge*.

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

Background

The Revised Scheduling Order in this proceeding set the date for any oral hearing requested by the parties for August 11, 2020, and it set the deadline for requesting an oral hearing as June 30, 2020. Paper 28 at 6. Neither party requested an oral hearing by June 30, 2020. The Board issued an Order noting that fact and stating that the Board would proceed to issue a Final Written Decision in due course without an oral hearing. Paper 33. Shortly thereafter, Patent Owner requested an oral hearing. Paper 34; Ex. 2072. In its submissions, Patent Owner stated that it believed that it had filed a request on June 30, and that it was surprised to learn that its request had not been filed. Paper 34 at 1. Patent Owner provided convincing evidence that it did, in fact, believe that a request for oral hearing had been filed on June 30. *See* Ex. 2073. Patent Owner requested that the Board grant its request for an oral hearing. *Id.*

Petitioner has indicated that it believes “oral argument [is] entirely unnecessary in this case,” but Petitioner ultimately “takes no position either for or against the grant of oral argument.” Paper 34 at 2.

Because (1) Patent Owner timely notified Petitioner of its intent to request an oral hearing, *see* Ex. 2073, (2) the failure to file the request appears to be the result of an inadvertent filing error, *see* Paper 34, and (3) Petitioner does not oppose having an oral hearing, *see id.*, Patent Owner’s request for an oral hearing is hereby *granted*, subject to the procedures and requirements below.

Date and Time of Hearing

The oral hearing will commence at 1:00 pm ET on August 11, 2020, by video. 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.

If at any time during the proceeding, you encounter technical or other difficulties that fundamentally undermine your ability to adequately represent your client, please let the panel know immediately, and adjustments will be made.

To facilitate planning, each party must contact PTAB Hearings at (571) 272-9797 five business days prior to the oral hearing date to receive video set-up information. As a reminder, all arrangements and the expenses involved with appearing by video, such as the selection of the facility to be used from which a party will attend by video, must be borne by that party. If a video connection cannot be established, the parties will be provided with dial-in connection information, and the oral hearing will be conducted telephonically.

If one or both parties would prefer to participate in the oral hearing telephonically, they should notify PTAB Hearings at the above telephone number five business days prior to the hearing to receive dial-in connection information.

Allotted Argument Time

As requested by Patent Owner, each party will have a total of **60 minutes** to present arguments (including any rebuttal). Petitioner will open the hearing by presenting its arguments. Petitioner may reserve rebuttal time; however, absent special circumstances, Petitioner may reserve no more than half its total presentation time. *See Consolidated Trial Practice Guide*

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(November 2019) at 83, *available at* <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>. Patent Owner will then present its arguments. Petitioner may then use any time reserved for rebuttal to respond to Patent Owner’s arguments presented at oral hearing. Patent Owner may then present a brief sur-rebuttal to Petitioner’s arguments presented in rebuttal. *See id.*

Scope of Arguments

At the oral hearing, the parties may present arguments (1) on issues raised in the Revised Motion to Amend, Opposition, Reply, and Sur-reply, and (2) on any other pending motions. The parties may rely upon “evidence that has been previously submitted in the proceeding, but may only present arguments relied upon in the papers previously submitted.” Consolidated Trial Practice Guide at 85–86. “No new evidence may be presented at the oral argument.” *Id.*

Request for Prehearing Conference

Either party may request a prehearing conference call. *See* Consolidated Trial Practice Guide at 82. The purpose of a prehearing conference is to afford the parties the opportunity to preview (but not argue) issues to be discussed at the oral hearing, and to seek the Board’s guidance as to particular issues that the panel would like the parties to address at the oral hearing. The parties may also discuss any unresolved issues with demonstrative exhibits. The Board may rule on a limited numbers of objections and disputed exhibits during the prehearing conference, or after

the prehearing conference and before the oral hearing. The Board may also defer ruling until the oral hearing or thereafter.

The prehearing conference is not required, and absent a request, no conference will be held. Although the Revised Scheduling Order set the deadline for requesting a prehearing conference as July 28, 2020, *see* Paper 28 at 6 (Due Date 6), due to the delay by Patent Owner in requesting oral argument described above, we will allow a request for prehearing conference to be made on or before **July 29, 2020**. Prior to making such a request, Petitioner and Patent Owner shall meet and confer and, when possible, send a joint request by email to Trials@uspto.gov with an agreed upon set of limited issues for discussion and several proposed times for the conference. Any prehearing conference should be no later than three business days prior to the hearing.

Demonstrative Exhibits

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. Consolidated Trial Practice Guide at 84. Demonstrative exhibits cannot be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Accelaron, 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”). Demonstrative exhibits should cite evidence in the record. The pages of each demonstrative should be numbered.

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