

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LKQ CORPORATION and
KEYSTONE AUTOMOTIVE INDUSTRIES, INC.,
Petitioner,

v.

GM GLOBAL TECHNOLOGY OPERATIONS LLC,
Patent Owner.

IPR2020-00821 (Patent D813,759 S)
PGR2020-00054 (Patent D864,065 S)
PGR2020-00055 (Patent D855,508 S)¹

Before KEN B. BARRETT, SCOTT A. DANIELS, and
ROBERT L. KINDER *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

ORDER
Setting Oral Argument
37 C.F.R. § 42.70

¹ This Order applies to each of the above-identified cases. The parties may not use this style caption unless authorized.

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I. ORAL ARGUMENT

A. Time and Format

The parties filed requests for oral argument in each of the above-identified proceedings. IPR2020-00821, Papers 27, 28.² Patent Owner requests thirty (30) minutes of argument time per side for each proceeding, while Petitioner requests ninety (90) minutes of argument time per side. *Id.* In addition, Petitioner requests holding oral arguments for the proceedings on successive days. Paper 28, 2.

The above-identified proceedings involve the same parties and the same counsel, and the Scheduling Orders set the same date for oral argument. Paper 11, 10. Accordingly, oral arguments will commence at **1:00 PM Eastern Time on Tuesday, June 29, 2021**, by video.³ The Board will provide a court reporter, and the reporter's transcript will constitute the official record of each respective hearing. Each proceeding will have a distinct oral hearing with its own transcript. Between the oral hearing for each proceeding, the panel will plan for an approximate ten minute break. The order of presentation will be: (1) IPR2020-00821, (2) PGR2020-00054, and (3) PGR2020-00055. The parties may stipulate to a different order of presentation by notifying the Board one day before the hearing.

In each of the above-identified proceedings, Petitioner will have a **total of thirty (30)** minutes to present argument and Patent Owner will have

² We cite to IPR2020-00821 for expediency. The parties filed similar papers in PGR2020-00054 and PGR2020-00055.

³ If there are any concerns about disclosing confidential information, the parties must contact the Board at Trials@uspto.gov at least ten (10) business days before the hearing date.

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a total of thirty (30) minutes to respond. For each proceeding, Petitioner will open the hearing by presenting its case regarding the challenged claim. Thereafter, Patent Owner will respond to Petitioner's argument. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner. In accordance with the Consolidated Trial Practice Guide⁴ ("CTPG"), issued in November 2019, Patent Owner may request to reserve time for a brief sur-rebuttal. *See* CTPG 83.

Either party may request a pre-hearing conference. *See* Office Consolidated Trial Practice Guide at 82; *see also* 84 Fed. Reg. 64,280 (Nov. 21, 2019). Requests must be made by June 15, 2021. *See* Paper 11, 9 (Due Date 6). To request such a conference, the parties should jointly contact the Board at Trials@uspto.gov and include several dates and times of availability that are generally no later than three business days prior to the oral hearing.

B. Demonstratives

As set forth in 37 C.F.R. § 42.70(b), demonstratives shall be served on opposing counsel at least seven (7) business days before the hearing date and filed at least one day before the hearing.⁵

Demonstratives are not a mechanism for making new arguments. Demonstratives also are not evidence, and will not be relied upon as evidence. Rather, demonstratives are visual aids to a party's oral

⁴ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

⁵ The parties may stipulate to an alternative schedule for serving and filing demonstratives, and request that the Board modify the schedule for filing and serving demonstratives at least seven (7) business days before the hearing date.

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presentation regarding arguments and evidence previously presented and discussed in the papers. Accordingly, demonstratives shall be clearly marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. *See Dell Inc. v. Acceleron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (holding that the Board is obligated under its own regulations to dismiss untimely argument “raised for the first time during oral argument”). “[N]o new evidence may be presented at the oral argument.” CTPG 86; *see also St. Jude Med., Cardiology Div., Inc. v. The Bd. of Regents of the Univ. of Mich.*, IPR2013-00041, Paper 65, 2–3 (PTAB Jan. 27, 2014) (explaining that “new” evidence includes evidence already of record but not previously discussed in any paper of record).

Furthermore, because of the strict prohibition against the presentation of new evidence or arguments at a hearing, it is strongly recommended that each demonstrative include a citation to a paper in the record, which allows the Board to easily ascertain whether a given demonstrative contains “new” argument or evidence or, instead, contains only that which is developed in the existing record.

Due to the nature of the Board’s consideration of demonstratives and the opportunity afforded for the parties to reach an agreement without involving the Board, the Board does not anticipate that objections to demonstratives are likely to be sustained. Nevertheless, to the extent that a party objects to the propriety of any demonstrative, the parties shall meet and confer in good faith to resolve any objections to demonstratives prior to filing the objections with the Board. If such objections cannot be resolved, the parties may file any objections to demonstratives with the Board no later

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than the time of the hearing. The objections shall identify with particularity which portions of the demonstratives are subject to objection (and should include a copy of the objected-to portions) and include a one (1) sentence statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider any objections, and may reserve ruling on the objections.⁶ Any objection to demonstratives that is not timely presented will be considered waived.

Finally, the parties are reminded that each presenter should identify clearly and specifically each paper (e.g., by slide or screen number for a demonstrative) referenced during the hearing to ensure the clarity and accuracy of the court reporter's transcript and for the benefit of all participants appearing electronically.

C. Presenting Counsel

The Board generally expects lead counsel for each party to be present at the hearing. *See* CTPG 11. Any counsel of record may present the party's argument as long as that counsel is present by video.

D. Video Hearing Details

To facilitate planning, each party must contact the Board at PTABHearings@uspto.gov at least five (5) business days prior to the 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 from which a party will attend by video, must be borne by that party. If a video connection cannot be established, the parties

⁶ If time permits, the Board may schedule a conference call with the parties to discuss any filed objections.

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