

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FITBIT, INC.,
Petitioner,

v.

ALIPHCOM, INC. D/B/A JAWBONE,
Patent Owner.

Case IPR2016-00607
Patent 8,529,811 B2

Before CHRISTOPHER L. CRUMBLEY, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

Patent Owner Aliphcom, Inc. d/b/a Jawbone (“Jawbone”) requests oral argument in this *inter partes* review trial pursuant to 37 C.F.R. § 42.70. Paper 31. Petitioner Fitbit, Inc., does not seek oral argument, but asks that if we grant Jawbone’s request, we also permit Fitbit to participate in oral argument. Paper 32. Upon consideration, these requests are *granted*. Oral

argument shall commence at 10:30 AM Eastern Time on May 11, 2017, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

Jawbone requests no more than fifteen minutes per side of oral argument. Paper 31. Given the limited nature of the issues pending before the Board and our review of the parties' briefing, the request is reasonable. Each party will have fifteen minutes of total time to present arguments.

Fitbit bears the ultimate burden of proof that Jawbone's claims at issue in this trial are unpatentable. Therefore, Fitbit will open the hearing by presenting argument regarding the pending grounds of unpatentability. Jawbone will then have the opportunity to respond to Fitbit's arguments. If desired, Fitbit may reserve rebuttal time to respond to arguments presented by Jawbone.

The Board will provide a court reporter, and the transcript shall constitute the official record of the hearing. No motions to seal have been filed in this proceeding. Accordingly, the Board concludes that the parties are capable of presenting their arguments without discussing confidential information, and exercises its discretion to make the oral hearing publicly accessible. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

Pursuant to 37 C.F.R. § 42.70(b), demonstrative exhibits shall be served on opposing counsel at least seven business days before the hearing. Parties shall file demonstrative exhibits with the Board at least three business days before the hearing. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University*

of Michigan, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved the parties may file any remaining objections with the Board at least three business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection and include a one-sentence statement of the basis for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

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

Any special requests for audio visual equipment should be directed to Trials@uspto.gov.

In light of the foregoing, it is:

ORDERED that oral hearing, conducted pursuant to the procedures outlined above, shall commence at 10:30 AM Eastern Time on May 11, 2017.

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Patent 8,529,811 B2

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