

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITTER, INC.,
Petitioner,

v.

VIDSTREAM, LLC,
Patent Owner.

IPR2017-00829 (Patent 9,083,997 B2)
IPR2017-00830 (Patent 9,083,997 B2)¹

Before SALLY C. MEDLEY, CHARLES J. BOUDREAU, and
JESSICA C. KAISER, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

¹ This Order will be entered in each case. The parties are not authorized to use this caption style.

Petitioner and Patent Owner have each filed requests for oral hearing in the above captioned proceedings, pursuant to 37 C.F.R. § 42.70.

IPR2017-00829, Papers 57, 60.² Both parties propose that the hearing for these cases be combined and that each party be allocated sixty (60) minutes to present its argument for the combined hearing. Paper 57, 2; Paper 60, 1. The requests are granted according to the terms set forth in this Order.

The combined oral hearing will commence at 1:00 PM Eastern Time on Friday, October 19, 2018, in Hearing Room B on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Each party will have sixty (60) minutes total time to present its arguments in the above-captioned proceedings. Petitioner bears the ultimate burden of proof that the claims at issue in these reviews are unpatentable. Therefore, at oral argument, Petitioner will proceed first to present its case regarding the challenged patent claims and the grounds on which the Board instituted trial. Petitioner may reserve some (but not more than half) of its argument time to respond to arguments presented by the Patent Owner. After Petitioner's initial presentation, Patent Owner will be given an opportunity to respond and also may reserve some of its argument time for sur-rebuttal. Thereafter, Petitioner may use any reserved time to reply to Patent Owner's presentation, and finally, Patent Owner may present a brief sur-rebuttal if it has reserved time.

New arguments not previously presented in the parties' substantive papers in these proceeding shall not be raised at oral hearing, and no live

² For convenience, we cite to papers in IPR2017-00829. Similar papers were filed in IPR2017-00830.

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testimony from any witness will be taken at the oral argument. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. Please be advised, available seating is limited. The Board will provide a court reporter, and the reporter's transcript shall constitute the official record of the oral hearing.

The parties shall serve any demonstrative exhibits on opposing counsel at least seven business days before the hearing or at least seven business days before the pre-hearing conference if one is scheduled. The parties shall also provide a courtesy copy of any demonstrative exhibits to the Board no later than five business days before the hearing, or five business days prior to a pre-hearing conference if one is scheduled, by emailing them to Trials@uspto.gov. In addition, the parties shall file any demonstrative exhibits in these proceedings within two days of the hearing. Demonstrative exhibits are not evidence and are intended only to assist the parties in presenting their oral argument to the panel. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65) for guidance regarding the appropriate content of demonstrative exhibits. The parties shall confer with each other regarding any objections to demonstrative exhibits. For any issue that cannot be resolved after conferring, the parties may each send by email to Trials@uspto.gov a one-page list of objections at least two business days before the hearing if no pre-hearing conference is requested or two business days before a pre-hearing conference if one is scheduled. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement of the reason for each objection and

the reason the other party opposes the 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 telephone conference if deemed necessary. Any objection to demonstrative exhibits that is not timely presented may be considered waived.

No later than DUE DATE 6, either party may request a pre-hearing conference, which if requested, will be held at 12:00 PM Eastern Time on Tuesday, October 16, 2018. Prior to such a request, the parties shall meet and confer to discuss potential issues for the pre-hearing conference. The parties shall then send a joint request to the Board by email to Trials@uspto.gov. Such a request shall include a bullet list of items the parties would like to discuss with the panel, which may include:

- a brief preview (but not argument) as to issues the parties plan to address at the oral hearing;
- issues for which the parties would like the panel's guidance on whether to address at the oral hearing;
- a limited number of objections in the parties' motions to exclude for which a party seeks early resolution; and
- any motions to strike.

If the parties are unable to agree on the issues to be addressed at the pre-hearing conference, the joint request shall specify which issues are disputed and provide a brief statement (not to exceed one sentence) of the opposing party's objection.

The panel may, at its discretion, indicate certain issues during the pre-hearing conference that it wishes the parties to emphasize at the oral hearing. Although the parties and the panel may discuss issues for the oral hearing at

the pre-hearing conference, the issues discussed at the pre-hearing conference do not limit the scope of the oral hearing. Instead, the parties remain free to address at the oral hearing any issue properly raised during the trial, and the panel may ask questions on issues other than those identified at the pre-hearing conference. The parties may also discuss objections to demonstrative exhibits at the pre-hearing conference, but the panel may reserve ruling on such objections until a later time.

The parties are reminded that, at the oral hearing, the 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 to assist Judge Boudreau who will join the hearing remotely from San Jose, California, and Judge Kaiser who will join the hearing remotely from Denver, Colorado. Judge Boudreau and Judge Kaiser will be unable to view images projected in the hearing room. Similarly, to ensure presenters may be heard by Judge Boudreau and Judge Kaiser, the parties are reminded to speak only when standing at the hearing room podium and toward the attached microphone. No live testimony from any witness will be taken at the oral argument. 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.

The parties may request the use of audio-visual equipment during the oral hearing. Such requests should be directed to Trials@uspto.gov at least five business days in advance of the hearing date. If the request is not

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received timely, the equipment may not be available on the day of the hearing.

Accordingly, it is

ORDERED that the oral arguments for IPR2017-00829 and IPR2017-00830 will be consolidated,³ and the consolidated oral argument shall take place on Friday, October 19, 2018, in Hearing Room B on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, at 1:00 PM Eastern Time; and

FURTHER ORDERED that the parties should note that arguments made at the consolidated oral hearing shall have application only in proceeding(s) the record of which supports the argument.

³ The proceedings, however, have not been consolidated.

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