

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VF OUTDOOR, LLC,
Petitioner,

v.

COCONA, INC.,
Patent Owner.

Case IPR2018-00190
Patent 8,945,287 B2

Before KRISTINA M. KALAN, CHRISTOPHER M. KAISER, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

ORDER
Oral Hearing
37 C.F.R. § 42.70

We instituted *inter partes* review in the above-referenced proceeding. Paper 14. The Scheduling Order set February 28, 2019 as the date for oral argument, if requested. Paper 15. Petitioner filed a request for oral argument pursuant to 37 C.F.R. § 42.70(a), requesting one (1) hour for oral argument, including any time reserved for rebuttal. Paper 37. Patent Owner also filed a request for oral argument pursuant to 37 C.F.R. § 42.70(a). Paper 38. These requests are *granted*. We allocate each party one (1) hour of total argument time.

The hearing will commence at 1:00 pm Eastern Time, on Thursday, February 28, 2019 and will be conducted at the USPTO Central Headquarters in Alexandria, Virginia (the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, 22314). At least one judge may participate in the hearing via videoconference from a remote location; counsel for the parties, however, must appear in person. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

Petitioner bears the ultimate burden of proof that the claims at issue are unpatentable. Therefore, the arguments will proceed as follows: Petitioner will argue first and may present arguments with regard to the challenged claims. Petitioner may reserve up to half its allotted time for rebuttal. Patent Owner will then have the opportunity to respond to Petitioner's arguments. Next, Petitioner may use any time it has reserved for rebuttal to respond to Patent Owner's arguments. Lastly, Patent Owner may use any time it has reserved for a brief sur-rebuttal to respond to Petitioner's arguments. No other arguments will be heard.

The Board will provide a court reporter, and the reporter's transcript will constitute the official record of the hearing. The hearing transcript will be entered in the record of this proceeding.

Petitioner has requested the ability to display demonstrative exhibits. Paper 37. Demonstrative exhibits are visual aids to oral argument and not evidence, and shall be clearly marked as such. For example, each slide may be marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer. Demonstrative exhibits may not be used to advance arguments or introduce evidence not previously presented in the record. *See Dell Inc. v. Acceleron, 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"). Instead, demonstrative exhibits should cite to the briefs and evidence in the record. The parties shall serve any demonstrative exhibits on opposing counsel at least seven (7) business days before the hearing and shall file them with the Board at least five (5) business days before the hearing. 37 C.F.R. § 42.70(b).

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if any objections cannot be resolved, the unresolved objections must be filed with the Board at least (2) two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstratives and portions thereof are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the

objections and schedule a conference if the Board deems necessary.

Otherwise, the Board will rule on the objections at the hearing.

To aid in the preparation of an accurate transcript, each party shall provide a paper copy of any demonstratives to the court reporter on the day of the oral argument. Such paper copies shall not become part of the record of this proceeding. The parties are reminded that, during the hearing, the presenter should identify clearly each demonstrative exhibit (e.g., by slide or screen number) to ensure the clarity and accuracy of the reporter's transcript and permit any judge participating from a remote location to follow the arguments.

If the parties have questions as to whether demonstrative exhibits will be sufficiently visible and available to all of the judges, or the parties have questions regarding specific audio-visual equipment, the parties are invited to contact the Board at (571) 272-9797. Requests for audio-visual equipment are to be made five (5) business days in advance of the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

IPR2018-00190
Patent 8,945,287 B2

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