

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BLASTERS, INC,
Petitioner,

v.

WATERBLASTING, LLC,
Patent Owner.

Case IPR2018-00504
Patent 7,255,116 B2

Before JEFFREY W. ABRAHAM, MICHAEL L. WOODS and
JOHN R. KENNY, Administrative Patent Judges.

KENNY, Administrative Patent Judge.

ORDER
Oral Argument
37 C.F.R. § 42.70

Petitioner and Patent Owner each filed a request for oral argument in this proceeding. Papers 19, 21. In the requests, the parties agreed that each side should be provided with 60 minutes of total argument time. Paper 19, 2; Paper 21, 2. The requests are *granted*.

Each party will have 60 minutes of total argument time. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in this review are unpatentable. Accordingly, Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial. After Petitioner's presentation, Patent Owner will respond to Petitioner's argument. Petitioner may reserve time to respond to Patent Owner's argument, but may not reserve more than half of the total time allotted for argument.

Oral argument will commence at 1 pm Eastern Time on March, 29, 2019, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearing will be open to the public for in-person attendance, which will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. If the parties have any concern about disclosing confidential information, they should contact the Board at least 10 days in advance of the hearing to discuss the matter.

Demonstrative exhibits used at the final 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. Demonstrative exhibits cannot 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”). Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing and filed no later than the time of the hearing. The Board requests that such exhibits be filed at the Board at least five business days before the hearing to facilitate the panel’s preparation. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041, Paper 65 (PTAB Jan. 27, 2014), for guidance regarding the appropriate content of demonstrative exhibits.

The parties should strive to resolve any disagreement regarding demonstratives before involving the Board. If, however, the parties are unable to resolve their disagreement, either party may submit an objection to the demonstratives with the Board if filed at least 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 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 deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument.

The parties are reminded that, under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been so filed.

One or more members of the panel hearing this case will attend the hearing remotely, by video and audio link. The parties are reminded that, during the hearing, the presenter must identify clearly and specifically each demonstrative exhibit referenced (e.g., by slide or screen number) to ensure the clarity and accuracy of the reporter's transcript, and to ensure that a remote judge can follow the argument even if the video connection is disrupted. The parties are requested to speak directly into the microphone, including during initial introduction of counsel.

If either party anticipates that its lead counsel will not attend the hearing, that party should notify the Board no later than two business days prior to the hearing. Any counsel of record may present a party's argument. Either party's argument may be divided, but interruptions for change of counsel should be kept to a minimum.

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