

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC., FORTINET, INC., and
WATCHGUARD TECHNOLOGIES, INC.

Petitioner,

v.

SELECTIVE TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2018-00594
Patent 8,111,629 B2

Before MELISSA A. HAAPALA, *Acting Vice Chief Administrative Patent Judge*, KRISTEN L. DROESCH, and CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

The parties jointly filed a request for oral hearing in this proceeding. Paper 33. The request for oral hearing is *granted*.

The hearing will commence at 1:00 PM Eastern Time on May 7, 2019, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

Each side will have 60 minutes, total, to present its arguments. 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 and grounds set forth in the Petition. After Petitioner's presentation, Patent Owner will respond to Petitioner's arguments. Petitioner may reserve up to half of its time for rebuttal to respond to Patent Owner's arguments. Thereafter, Patent Owner may use any of its remaining time for sur-rebuttal, to respond to Petitioner's rebuttal arguments.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are requested to contact the Board at least ten (10) business days in advance of the hearing to discuss the matter.

At least two members of the panel may attend the hearing from a remote location by use of two-way audio-visual communication equipment and may not be able to view the projection screen in the hearing room.

Specifically, documents presented on the ELMO projector are not visible to judges at a remote location, so please plan accordingly. If a demonstrative exhibit is not made available or visible to the judge(s) presiding over the hearing remotely, that demonstrative will not be considered. Each presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript and for the benefit of the judge(s) presiding over the hearing remotely. Because of limitations of the audio transmission systems in our hearing rooms, the presenter may speak only when standing at the hearing room lectern.

Per the update to the Office Patent Trial Practice Guide, either party may request a pre-hearing conference. Office Patent Trial Practice Guide, August 2018 Update, 83 Fed. Reg. 39,989 (Aug. 13, 2018) (found at the following link to the USPTO website:

https://www.uspto.gov/sites/default/files/documents/2018_Revised_Trial_Practice_Guide.pdf).

Requests for a pre-hearing conference must be made no later than DUE DATE 6. Prior to such a request, the parties shall meet and confer to discuss potential issues for the pre-hearing conference. To request such a conference, an email should be sent to Trials@uspto.gov including a brief list of items the parties would like to discuss with the panel and several dates and times of availability for one or both parties, as appropriate, that are generally no later than three (3) business days prior to the oral hearing.

Please refer to the Guide for more information on the pre-hearing conference.

The parties are reminded that, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven (7) business days before the hearing date. The parties also shall provide a courtesy copy of any demonstrative exhibits to the Board at least five business days prior to the hearing by emailing them to Trials@uspto.gov. Notwithstanding 37 C.F.R. § 42.70(b), the parties shall not file any demonstrative exhibits in this proceeding without prior authorization from the Board. *See* 37 C.F.R. § 42.5(b). A hard copy of the demonstrative exhibits should be provided to the court reporter at the hearing.

The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB January 27, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. Demonstrative exhibits used at the oral 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”).

The parties must meet and confer in good faith to discuss and resolve any objections to demonstrative exhibits. Any party with unresolved objections must file such objections with the Board at least two (2) business

days before the hearing, if no pre-hearing conference is requested, or two (2) business days before a pre-hearing conference, if one is scheduled. The objections should identify with particularity which demonstrative exhibits 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, if no pre-hearing conference is requested, may schedule a conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. 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. However, any counsel of record may present the party's argument. If either party expects 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 (2) 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. Requests for special equipment will not be honored unless presented in a separate communication not less than five (5) business days before the hearing directed to the aforementioned e-mail address.

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