

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC., Petitioner,

v.

CARUCEL INVESTMENTS, L.P., Patent Owner.

IPR2019-01101 (Patent 7,221,904 B1)
IPR2019-01102 (Patent 7,848,701 B2)
IPR2019-01103 (Patent 7,979,023 B2)
IPR2019-01105 (Patent 8,718,543 B2)¹

UNIFIED PATENTS, LLC, Petitioner,

v.

CARUCEL INVESTMENTS, L.P., Patent Owner.

IPR2019-01079 (Patent 7,979,023 B2)

Before THOMAS L. GIANNETTI, DANIEL J. GALLIGAN, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

KORNICZKY, *Administrative Patent Judge*.

ORDER
Oral Argument (37 C.F.R. § 42.70)

¹ The parties are not authorized to use this caption.

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The parties have requested oral argument in each of the five proceedings. *See, e.g.*, IPR2019-01079, Papers 24, 25; IPR2019-01101, Papers 23, 24. The parties' requests are *granted*.

Oral Argument

The parties state in their requests that they have met and conferred to discuss the hearing. Having considered the parties' requests, we determine that a consolidated hearing for all five proceedings is appropriate. Accordingly, a consolidated oral hearing for all five proceedings will commence at 12:00 pm Eastern Time on September 2, 2020. Oral arguments will proceed by video.

The parties are directed to contact the Board at least five business days in advance of the hearing if there are any concerns about disclosing confidential information. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

If at any time during the proceeding, the parties encounter technical or other difficulties that fundamentally undermine their ability to adequately represent their client, they should let the panel know immediately, and adjustments will be made.²

To facilitate planning, each party must contact PTAB Hearings at PTABHearings@uspto.gov five business days prior to the oral hearing date

² For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

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to receive video set-up information. As a reminder, all arrangements and the expenses involved with appearing by video, such as the selection of the facility to be used from which a party will attend by video, must be borne by that party. If a video connection cannot be established, the parties will be provided with dial-in connection information, and the oral hearing will be conducted telephonically.

If one or both parties would prefer to participate in the oral hearing telephonically, they should notify PTAB Hearings at the above telephone number five business days prior to the hearing to receive dial-in connection information.

Petitioners in the five proceedings will have two hours of total argument time.³ Petitioners may allocate their arguments among counsel and among the challenged patents as they see fit. Patent Owner will have two hours of total argument time. Any representation made by counsel at the consolidated oral argument is applicable to and useable in all proceedings that have underlying basis for the representation.

At oral hearing, Petitioners will proceed first to present their case. Petitioners may reserve some, but not more than half, of their argument time for rebuttal. Thereafter, Patent Owner will respond to Petitioners' case and may reserve some of its argument time for sur-rebuttal. Next, Petitioners

³ We understand that Unified Patents LLC may request authorization for 15 minutes of additional time under the PTAB LEAP program. IPR2019-01079, Paper 24, 1 n.1. If the request is granted, we will address how to allocate this time at the oral hearing.

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may use any time they have reserved for rebuttal to respond to Patent Owner's specific arguments presented at the hearing. Then, Patent Owner may present a brief sur-rebuttal if it has reserved time. Petitioners bear the ultimate burden of proof that the claims at issue in these reviews are unpatentable.

Demonstrative Exhibits

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served and filed at least seven business days before the hearing. The Board further requests that such demonstratives be filed as a separate exhibit to facilitate the panel's preparation. A copy of the demonstratives should also be emailed five business days before the hearing to PTABHearings@uspto.gov.

The Board reminds the parties that demonstrative exhibits are intended to assist the parties in presenting their oral arguments and are 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. The Board also reminds the parties that demonstrative exhibits are not a mechanism for making arguments or introducing evidence not previously presented in the record. 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.

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The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If, however, the parties are unable to resolve their disagreement, the parties may file jointly a one-page list of objections at least two business days prior to the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one concise sentence) of the reason for each objection. No argument or further explanation is permitted. The panel will consider the objections and may schedule a conference call, if necessary, to discuss them. Typically, however, the panel will reserve ruling on the objections until the hearing or until a ruling is necessary to resolve the dispute. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

Because all participants 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 the remote judge can follow the argument even if the video connection is disrupted.

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Counsel Attendance at Oral Hearing⁴

The Board generally expects lead counsel for each party to be present by video at the oral hearing. However, any counsel of record may present the party's argument as long as that counsel is present by video. If either party anticipates that its lead counsel will not attend the hearing, the parties should notify the Board no later than two business days prior to the hearing.

Audio-visual Equipment

Any special requests for audio-visual equipment should be directed to PTABHearings@uspto.gov. A party may also indicate any special requests related to appearing at an in-person oral hearing, such as a request to accommodate physical needs that limit mobility or visual or hearing impairments, and indicate how the PTAB may accommodate the special request. Any special requests must be presented in a separate communication not less than five business days before the hearing.

Counsel should unmute themselves only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. During the oral hearing, the parties are advised to identify clearly and specifically each demonstrative referenced (e.g., by slide or screen number) to ensure the clarity and accuracy of the court reporter's transcript. In addition, counsel are advised to identify themselves each time they speak.

⁴ The parties should consult the November 2019 Consolidated Trial Practice Guide (<https://www.uspto.gov/TrialPracticeGuideConsolidated>) for additional information on oral hearings.

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Furthermore, the remote nature of the oral hearing may also result in an audio lag, and so the parties are advised to observe a pause prior to speaking to avoid speaking over others.

Members of the public may request to listen in on this oral hearing. If resources are available, the Board generally expects to grant such requests. If either party objects to the Board granting such requests, for example, because confidential information may be discussed, the party must notify the Board by contacting PTABHearings@uspto.gov at least five business days prior to the oral hearing date.

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