

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HULU, LLC,
Petitioner,

v.

SITO MOBILE R&D IP, LLC and SITO MOBILE, LTD.,
Patent Owner.

IPR2021-00265 (Patent 9,591,360 B2)
IPR2021-00308 (Patent 8,825,887 B2)¹

Before JONI Y. CHANG, THOMAS L. GIANNETTI,
KEVIN W. CHERRY, and MICHAEL T. CYGAN,
*Administrative Patent Judges.*²

CHANG, *Administrative Patent Judge.*

ORDER
Setting Oral Argument
37 C.F.R. § 42.70

¹ The parties are not authorized to use this caption unless otherwise directed by the Board.

² This is not an expanded panel of the Board. It is a listing of all the Judges on the panels of the above-listed proceedings.

I. ORAL ARGUMENT

Petitioner and Patent Owner have each requested an oral hearing in these cases. Those requests are *granted*.

A consolidated hearing will commence at **1:00 PM (ET) on February 7, 2022**. Oral arguments will proceed by video. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. The parties are directed to contact the Board at least ten days in advance of the hearing if there are any concerns about disclosing confidential information.

If at any time during the proceeding, a party encounters technical or other difficulties that fundamentally undermine the party's ability to adequately represent their client, please let the panel know immediately, and adjustments will be made. For example, if a party is experiencing poor video quality, the Board may provide alternate dial-in information.

To facilitate planning, each party must contact PTAB Hearings at PTABHearings@uspto.gov at least five business days prior to the oral hearing date 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 email address five business days prior to the hearing to receive dial-in connection information.

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Each party will have a total of 75 minutes total to present its argument in both cases. Based on the issues presented, Petitioner will open the hearing by presenting its case regarding the unpatentability of the challenged claims in both cases. After Petitioner's presentation, Patent Owner will present its case and respond to Petitioner's arguments regarding the patentability of the challenged claims in both cases. Petitioner may reserve rebuttal time to respond to Patent Owner's argument. Patent Owner may request a brief sur-rebuttal as set forth in the Board's Consolidated Trial Practice Guide (November 2019), available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

The parties may request a pre-hearing conference in advance of the hearing. *See id.* at 82. If either party desires a pre-hearing conference, the parties should jointly contact the Board at Trials@uspto.gov at least seven business days before the hearing date to request a conference call for that purpose.

II. DEMONSTRATIVES

Demonstrative exhibits must be served at least seven business days before the hearing date. The parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits.

Any party with unresolved objections must file a list of those objections with the Board at least two business days before the hearing. For each objection, the list must identify with particularity which portions of the demonstrative exhibits are subject to the objection and may include a short, one-sentence statement explaining the objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will

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reserve ruling on the objections. Any objection to demonstrative exhibits not timely presented may be considered waived.

In addition to the service requirement of 37 C.F.R. § 42.70(b), each party also shall file its demonstrative exhibits with the Board as a separate paper at least five business days prior to the hearing. A copy of the demonstratives should also be sent by email to PTABHearings@uspto.gov.

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 may not introduce new evidence or arguments. Instead, demonstrative exhibits should include a cite to evidence in the record. Demonstrative exhibits used at the final hearing are aids to oral argument and not evidence. Each slide of a demonstrative exhibit must be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer.

Finally, the parties are reminded that 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.

III. OTHER MATTERS

The Board generally expects lead counsel for each party to be present by video at the oral hearing. Any counsel of record may present the party’s argument as long as that counsel is present by video. The parties should notify the Board in advance of the hearing if lead counsel will not be present.

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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 a video oral hearing, such as a request to accommodate 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 days before the hearing.

During the oral hearing, please unmute yourself only when speaking. The panel will have access to all papers filed with the Board, including demonstratives. In addition, the parties are advised to identify themselves each time they speak. 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 ten business days prior to the oral hearing date.

IV. LEAP

The Board has established the “Legal Experience and Advancement Program,” or “LEAP,” to encourage advocates with less legal experience to argue before the Board to develop their skills. The Board defines a LEAP practitioner as a patent agent or attorney having three or fewer substantive oral arguments in any federal tribunal, including PTAB.

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The parties are encouraged to participate in the Board's LEAP program. Either party may request that a qualifying LEAP practitioner participate in the program and conduct at least a portion of the party's oral argument. The Board will grant up to fifteen minutes of additional argument time to that party, depending on the length of the proceeding and the PTAB's hearing schedule. A party should submit a request, no later than five business days before the oral hearing date, by email to the Board at PTABHearings@uspto.gov.

The LEAP practitioner may conduct the entire oral argument or may share time with other counsel, provided that the LEAP practitioner is offered a meaningful and substantive opportunity to argue before the Board. Whether an argument is "substantive" for purposes of determining whether an advocate qualifies as a LEAP practitioner will be made on a case-by-case basis.

The party has the discretion as to the type and quantity of oral argument that will be conducted by the LEAP practitioner. Moreover, whether the LEAP practitioner conducts the argument in whole or in part, the Board will permit more experienced counsel to provide some assistance to the LEAP practitioner, if necessary, during oral argument, and to clarify any statements on the record before the conclusion of the oral argument. The Board does not draw any inference about the importance of a particular issue or issues, or the merits of the party's arguments regarding that issue, from the party's decision to have (or not to have) a LEAP practitioner argue.

Additional information on the LEAP program is available at <https://www.uspto.gov/patents/ptab/leap>.

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V. ORDER

Accordingly, it is

ORDERED that a consolidated oral argument for these proceedings shall commence at **1:00 PM (ET) on February 7, 2022**, by video, and proceed in the manner set forth in this Order.

For PETITIONER:

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