

**UNITED STATES
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Patent Trial and Appeal Board Inventor Hour: Episode 25

Meredith Petravick, Administrative Patent Judge

John Schneider, Administrative Patent Judge

Amee Shah, Administrative Patent Judge

Brandon Warner, Administrative Patent Judge

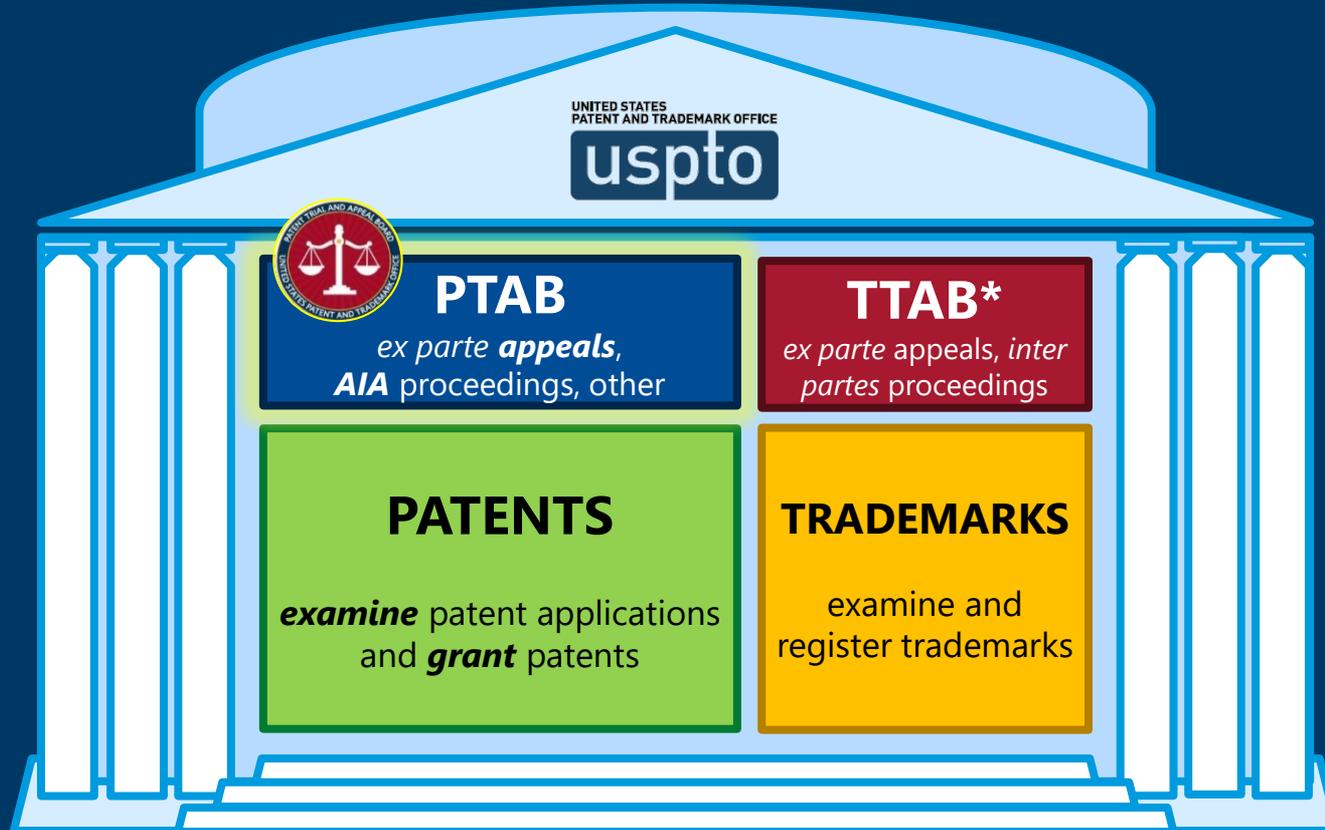
Special guest: **Stephen F.W. Ball, Jr.**, Partner at Husch Blackwell

February 22, 2024

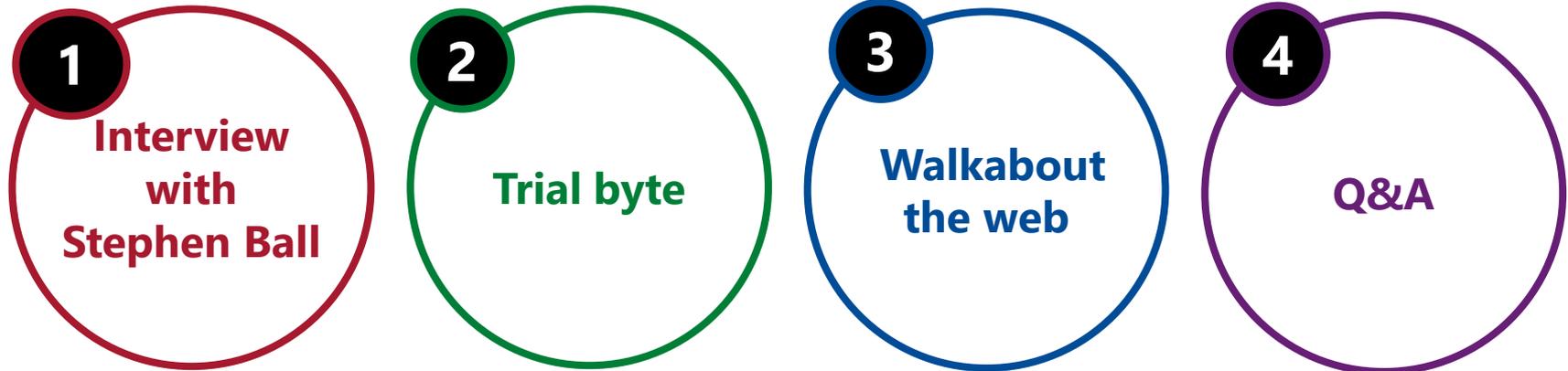


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What is the Patent Trial and Appeal Board?



Today's agenda



*Information not intended as legal advice

Question/comment submission

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Amee Shah, Administrative Patent Judge



An interview with Stephen Ball, Partner at Husch Blackwell



Stephen Ball
Partner at Husch Blackwell

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Application Assistance Unit

- The staff in the Application Assistance Unit (AAU) is trained to assist with a broad range of questions and issues pertaining to **pre-examination processing of patent applications** by the Office of Patent Application Processing (OPAP) and the **post-examination processing of patent applications** by the Office of Data Management (ODM).
- Available Monday through Friday (except federal holidays) from 8:30 a.m. to 5 p.m. ET.
 - Toll-Free: 888-867-0101
 - Local: 571-272-4000
 - HelpAAU@uspto.gov



Meredith Petravick, Administrative Patent Judge



Trial byte:

How to request an AIA conference call

Conference calls

- Conference calls are used in AIA trial proceedings to raise and resolve issues in an expedited manner.



How to request a conference call

- Parties request a conference call with the panel of administrative patent judges (“APJs”) assigned to the case by sending an email to: Trials@uspto.gov.



When/why to request a conference call

- Seek **authorization** to file a motion
 - “A motion will not be entered without Board authorization. Authorization may be provided in an order of general applicability of during the proceeding.” 37 C.F.R. § 42.20(b)
- Before filing a **motion to amend**
 - “A patent owner may file one motion to amend a patent, but only after conferring with the Board.” 37 C.F.R. §§ 42.121(a), 42.221(a)
- Have an **initial conference** call
 - May be helpful to introduce yourself to the panel, resolve any initial issues, answer procedural questions, seek authorization for motions at start of proceeding, etc.
- After meeting and conferring — **to resolve any procedural disputes** that arise during trial, such as location or timing of a deposition

Prior to requesting a call

- **Before** requesting a conference call with the Board, parties should confer and try to resolve the issue themselves
- An **email** requesting a conference call should:
 - copy the other party (37 C.F.R. § 42.5(d) prohibits ex parte communications)
 - indicate generally the relief being requested or the subject matter of the conference call
 - state whether the opposing party opposes the request
 - include multiple times when all parties are available
- An email requesting a conference call **should NOT**:
 - include attachments
 - include substantive communications to the Board
 - (i.e., no arguments).

Remember to timely seek relief

“A party should seek relief promptly after the need for relief is identified. Delay in seeking relief may justify a denial of relief sought.” 37 C.F.R. § 42.25(b).

Example request



From: Sally Smith <ssmith@petitioner.com>
Sent: May 30, 2018 4:41 PM
To: Trials <Trials@USPTO.GOV>
Cc: Bob Baxter <bbaxter@patentowner.com>
Subject: IPR2018-12345 Late Filing

To the Patent Trial and Appeal Board:

Paper 22 (Petitioner's Objection to Evidence) was due May 1. Paper 22 was finalized and dated for May 1 on both the paper and on the certificate of service. We intended and believed that the document would be filed and served. Due to an internal mix-up by our paralegal, it appears that the document did not actually get filed until slightly after midnight May 2 and the document did not get served to opposing counsel until 12:17 AM on May 2. This mistake should not be held against my client.

Regards,
Sally Smith

Example request

- Sally Smith's email **does not follow best practices** because it:
 - does not include a **request** for a conference call
 - does not indicate the **relief** being sought
 - It does not indicate any applicable Board Rules
 - It does not request authorization to file a motion
 - does not indicate if the parties **conferred** or reasonably attempted to confer
 - does not provide the parties' **availability** for a conference call
 - may not be **timely**
 - ***"Late action.*** A late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interest of justice." 37 C.F.R. § 42.5(c)(3).

Example request



From: Sally Smith <ssmith@petitioner.com>
Sent: May 2, 2018 4:41 PM
To: Trials <Trials@USPTO.GOV>
Cc: Bob Baxter <bbaxter@patentowner.com>
Subject: IPR2018-12345 Late Filing

To the Patent Trial and Appeal Board:

Petitioner requests a conference call to seek authorization to file a motion to excuse late action pursuant to 37 C.F.R. § 42.5(c)(3). Paper 22 (Petitioner's Objection to Evidence) was due May 1, but was filed and served late, slightly after midnight May 2.

Petitioner and Patent Owner have conferred. Patent Owner opposes our request.

Petitioner and Patent Owner are available May 3rd and 4th between 12:00 p.m. and 4:00 p.m. eastern time and May 7th between 8:00 a.m. and 12:00 p.m. eastern time.

Regards,
Sally Smith

Board's response to request

- The panel may **schedule** a conference call, **grant** the request by email, or **deny** the request by email.
- Some **considerations** are whether the request:
 - is joint, opposed, or unopposed
 - is ministerial
 - for example, unopposed request to correct typographical errors in a filing or a unopposed request to expunge a duplicate filing
 - can be otherwise satisfied
 - for example, a request to file a motion to dismiss where the argument could be made in a preliminary response

Conclusion

Best Practices before requesting a call

- Before requesting a conference call, **parties should confer** and try to resolve the issue themselves.
- An **email** requesting a conference call should:
 - copy the other party (37 C.F.R. § 42.5(d) prohibits *ex parte* communications);
 - indicate generally the relief being requested or the subject matter of the conference call;
 - state whether the opposing party opposes the request; and
 - include multiple times when all parties are available.

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- A new story each month:
www.uspto.gov/journeys
 - Example: A legacy of love, loyalty, and laughter - the story of an inventor of mechanical toys (Yakity-Yak Talking Teeth), December 2023

Brandon Warner, Administrative Patent Judge



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A legacy of love, loyalty, and laughter
Iconic toy inventor Eddy Goldfarb continues to create at the age of 102 [FULL STORY](#)>

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NIST calls for public comments on draft March-In Rights Guidance
Comments on draft March-In Rights Guidance due February 6, 2024.

“ From revamping our website, to enhancing our chat bots, to modernizing our

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The image shows a screenshot of the United States Patent and Trademark Office (USPTO) website. At the top, there is a navigation bar with the USPTO logo and the text "UNITED STATES PATENT AND TRADEMARK OFFICE". To the right of the logo is a search bar with the placeholder text "Search uspto.gov". Below the search bar is a horizontal menu with the following items: "Patents", "Trademarks", "IP Policy", "Learning and Resources", and "Find It Fast". The "Find It Fast" item is circled in red. Below the menu is a large banner image featuring an elderly man, Eddy Goldfarb, holding a colorful toy. Below the banner is the text "A legacy of love, loyalty, and laughter" and "Iconic toy inventor Eddy Goldfarb continues to create at the age of 102 FULL STORY>". To the right of the banner is a search menu that is open, showing a list of search options. The "PTAB" (Patent Trial and Appeal Board) option is circled in red. Below the search menu is a "Latest news" section with the headline "NIST calls for public comments on draft March-In Rights Guidance" and a sub-headline "Comments on draft March-In Rights Guidance due February 6, 2018".

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Fee schedule and payment information

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A legacy of love, loyalty, and laughter
Iconic toy inventor Eddy Goldfarb continues to create at the age of 102 FULL STORY>

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Proceeding Type

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Decision Date: 11/13/2023 - 12/13/2023 ✕

544 results found
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	Proceeding #	Application #/Reexam Control #	Appellant/PO/Respondent	Board Decision	Decision Date	Proceeding Type	Decision Type	Tech Center
	IPR2023-00896	10916922	Walter Kidde Portable Equipment, Inc.	Institution Denied	12-13-2023	AIA Trial	Decision	2600
	IPR2023-00991	10934270	BeSang Inc.	Institution Granted	12-13-2023	AIA Trial	Decision	2800
	IPR2022-01171	14086807	Viasat, Inc.	Final Written Decision	12-13-2023	AIA Trial	Decision	2100
	IPR2023-00898	11532010	Walter Kidde Portable Equipment, Inc.	Institution Denied	12-13-2023	AIA Trial	Decision	2600
	2023000398	16314867	DSM IP ASSETS B.V.	Reversed	12-13-2023	Appeal	Decision	1700
	IPR2023-00816	16034278	Urban Intel, Inc.	Settled Before Institution	12-13-2023	AIA Trial	Decision	2400
	IPR2023-00815	14603434	Urban Intel, Inc.	Settled Before Institution	12-13-2023	AIA Trial	Decision	2400
	2022004454	16362876	HERE Global B.V.	Reversed	12-13-2023	Appeal	Decision	3600
	IPR2023-00958	16817461	10x Genomics, Inc.	Institution Denied	12-13-2023	AIA Trial	Decision	1600
	IPR2023-01054	15340991	Autonomous Devices, LLC	Institution Granted	12-13-2023	AIA Trial	Decision	2600
	2020004505	15962451	Universal Electronics Inc.	Reversed	12-13-2023	Appeal	Subsequent	2400

PTAB open data – Documents (Appeal)

Decision document for ex parte appeal

The screenshot shows the USPTO PTAB Decisions Documents page. The header includes the USPTO logo and navigation links for About Us, Jobs, and Contact Us. The main navigation bar has tabs for Decisions, Proceedings, and Documents, with Open Data and Help links on the right. A blue banner contains a message: "This site is the electronic warehouse to view individual papers for: (1) all public documents filed in PTAB AIA trial proceedings (i.e., briefing filed by parties and decisions by PTAB) since September 2012; and (2) decisions only by PTAB for appeal and interference proceedings issued after July 1997." The left sidebar has a "Refine by" section with "Identifiers" (set to "Proceeding #: 2023003920"), "Date Range", and "Names" filters. The main content area shows "Documents" for proceeding 2023003920, with "1 result found". A table lists the document details.

	Proceeding #	Document Type	Document Title	Document Filing Date	Tech Center
1	2023003920	Reversed	Decision_2023003920_12-13-2023.pdf	12-13-2023	1600

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Documents

Proceeding #: IPR2023-00896 ✕

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🔍	Proceeding #	Document Type	Document Title	Document Filing Date ▼	Tech Center
🔍	IPR2023-00896	Institution Decision: Deny	Denying Institution of Inter Partes Review 35 U.S.C. § 314	12-13-2023	2600
🔍	IPR2023-00896	Notice: Exhibit list	Patent Owner's Updated Exhibit List	11-22-2023	2600
🔍	IPR2023-00896	EXHIBIT	Excerpts from October 25, 2023 Deposition of John Pratt, Ph.D.	11-22-2023	2600
🔍	IPR2023-00896	EXHIBIT	Ex. 1046	11-22-2023	2600
🔍	IPR2023-00896	Notice: Exhibit list	Petitioners' Updated Exhibit List	11-22-2023	2600
🔍	IPR2023-00896	Order: Other	Order Granting Petitioner's Motion to Withdraw and Replace Lead Counsel	09-29-2023	2600
🔍	IPR2023-00896	EXHIBIT	Walter Kidde Portable Equipment Inc. v. First Alert, Inc., No. 6:22-cv-566-ADA-DTG, Dkt. No. 38	09-15-2023	2600
🔍	IPR2023-00896	EXHIBIT	Barrette Outdoor Living, Inc. v. Fortress Iron, LP et al., No. 3:21-cv-02008-E, Dkt. No. 24-7 at 48-49	09-15-2023	2600
🔍	IPR2023-00896	EXHIBIT	H. H. MABIE & C.F. REINHOLTZ, MECHANISMS AND DYNAMICS OF MACHINERY (4th ed. 1987)	09-15-2023	2600
🔍	IPR2023-00896	EXHIBIT	File History of U.S. Pat. No. 7,525,445	09-15-2023	2600
🔍	IPR2023-00896	POPR: filed	Patent Owner's Preliminary Response	09-15-2023	2600
🔍	IPR2023-00896	Notice: Updated Mandatory Notice	Petitioners' Updated Mandatory Notice	09-08-2023	2600
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00777

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AIA review # ² ▾	Filing date (mm/dd/yyyy) ¹	Institution decision date (mm/dd/yyyy)	Termination date (mm/dd/yyyy)	Petitioner application #	Petitioner patent #	Petitioner	Petitioner tech center	PO/Respondent application #	PO/Respondent patent #	PO/Respondent	PO/Respondent tech center	Status	Documents
IPR2023-00777	03/24/2023	11/21/2023	11/29/2023			Google LLC		09236409	6549988	LS CLOUD STOR...	2100	Terminated-Sett...	View document
IPR2021-00777	04/07/2021	10/05/2021	10/03/2022			The NOCO Com...		15355409	10046653	Pilot, Inc.	2800	Final Written De...	View document
IPR2020-00777	03/31/2020	10/07/2020	10/05/2021			Motherson Inno...		15161708	10261648	Magna Mirrors ...	2800	Final Written De...	View document
IPR2018-00777	03/14/2018	09/25/2018	09/24/2019			Lippert Compo...		09522545	6619693	Days Corporation	3600	Final Written De...	View document
IPR2017-00777	01/27/2017	08/22/2017				Cultec, Inc.		14165503	9255394	StormTech LLC ...	3600	Institution Deni...	View document
IPR2016-00777	03/23/2016	09/22/2016				Praxair Distribut...		12821020	8282966	Mallinckrodt Ho...	1600	Institution Deni...	View document
IPR2015-00777	02/19/2015	09/03/2015	09/03/2015			NetApp Inc.		09965335	6425035	Crossroads Syst...	2100	Institution Deni...	View document
IPR2014-00777	05/16/2014	10/24/2014	01/13/2015			McWane, Inc.		11458407	8567155	Waugh, Tom	3600	Terminated-Sett...	View document

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34 Termination Decision: Post-DI Settlement	Paper	11	11/29/2023	Board	Public
36 EXPUNGED_Parties' Joint Request to Terminate	Paper	9	11/28/2023	Petitioner	EXPUNGED-Public
1 Ex. 1034	Exhibit	1034	11/28/2023	Petitioner	Parties and Board
35 Parties' Joint Request to Terminate	Paper	10	11/28/2023	Petitioner	Public
38 Granting Institution of Inter Partes Review 35 U.S.C. § 314	Paper	7	11/21/2023	Board	Public
37 SCHEDULING ORDER	Paper	8	11/21/2023	Board	Public
39 Patent Owner's Preliminary Response	Paper	6	08/25/2023	Patent Owner	Public
40 NOTICE OF FILING DATE ACCORDED TO PETITION	Paper	5	05/25/2023	Board	Public
42 Notice : Power of Attorney	Paper	3	04/06/2023	Patent Owner	Public
41 Notice : Mandatory Notice	Paper	4	04/06/2023	Patent Owner	Public
33 Ex 1001	Exhibit	1001	03/24/2023	Petitioner	Public
32 Ex 1002	Exhibit	1002	03/24/2023	Petitioner	Public
31 Ex 1003	Exhibit	1003	03/24/2023	Petitioner	Public
30 Ex 1004	Exhibit	1004	03/24/2023	Petitioner	Public
29 Ex 1005	Exhibit	1005	03/24/2023	Petitioner	Public
28 Ex 1006	Exhibit	1006	03/24/2023	Petitioner	Public
27 Ex 1007	Exhibit	1007	03/24/2023	Petitioner	Public
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IPR2023-00975	05/26/2023					Apple Inc.		09865605	6874014	Sonrai Memory ...	2100	Pending	View document
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	Document name	Document type	Exhibit/Paper number	Filing date ↓	Filing party	Availability
1	Patent Owners Updated Mandatory Notice	Paper	10	12/08/2023	Patent Owner	Public
2	DECISION Granting Institution of Inter Partes Review 35 U.S.C. § 314	Paper	8	10/16/2023	Board	Public
3	SCHEDULING ORDER	Paper	9	10/16/2023	Board	Public
22	Patent Owners Preliminary Response	Paper	7	07/18/2023	Patent Owner	Public
23	Petitioner Updated Exhibit List	Paper	6	06/14/2023	Petitioner	Public
24	Apple Inc. v. Masimo Corporation, et al., May 25, 2023 Scheduling Order, Case No. ...	Exhibit	1050	06/14/2023	Petitioner	Public
24	Notice: Notice filing date accorded	Paper	5	04/18/2023	Board	Public
20	Patent Owners Mandatory Notice	Paper	3	04/05/2023	Patent Owner	Public
25	Patent Owners Power of Attorney	Paper	4	04/05/2023	Patent Owner	Public
18	U.S. Patent No. 10,076,257	Exhibit	1001	03/22/2023	Petitioner	Public
17	File history of the '257 patent	Exhibit	1002	03/22/2023	Petitioner	Public
15	Curriculum Vitae of Alan L. Oslan	Exhibit	1004	03/22/2023	Petitioner	Public
14	U.S. Pat. Pub. No. 2007/0021677, published January 25, 2007 ("Markel")	Exhibit	1005	03/22/2023	Petitioner	Public
13	U.S. Pat. No. 5,351,695, issued Oct. 4, 1994 ("Mills")	Exhibit	1006	03/22/2023	Petitioner	Public
12	Leslie Cromwell et al., Biomedical Instrumentation and Measurements (1973)	Exhibit	1008	03/22/2023	Petitioner	Public
11	US Pat. Pub. No. 2008/015063	Exhibit	1012	03/22/2023	Petitioner	Public
10	US Pat. Pub. No. 2005/0033284	Exhibit	1013	03/22/2023	Petitioner	Public
9	ABS Plastic Properties, ADECRO PLASTICS	Exhibit	1014	03/22/2023	Petitioner	Public
8	New Conductive and Insulative LAMINATE	Exhibit	1015	03/22/2023	Petitioner	Public

Question/comment submission

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– PTABInventorHour@uspto.gov

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Inventor Hour, Episode 26

Thursday, Mar. 28, 2024, noon (ET)

Inventor Hour, Episode 27

Thursday, Apr. 25, 2024 noon (ET)



