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PATENT AND TRADEMARK OFFICE ®

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I. Introduction

The Patent Trial and Appeal Board (PTAB or Board) is responsible for conducting trial proceedings under the America Invents Act (AIA), including inter partes reviews, post-grant reviews, and derivation proceedings; hearing appeals from adverse examiner decisions in patent applications and reexamination proceedings; and rendering decisions in interferences.

The Board has prepared this guide to aid appellants, petitioners, patent owners, and other interested parties with the administrative processes and procedures in place to facilitate oral hearings before the Board. This guide does not supersede or interpret law or regulation governing the legal aspects of the PTAB proceedings. This guide only addresses those administrative procedures created to support such law and regulation. Compliance with administrative guidelines is expected; however, the PTAB may modify certain guidelines as needed to meet business unit or stakeholder needs.

For questions about these procedures, please contact the PTAB Hearing Operations section at (571) 272-9797 or by email at PTABHearings@uspto.gov. Additional resources, including the current schedule of hearings, are available on our website at <https://www.uspto.gov/patents/PTAB/hearings>.

II. USPTO locations for oral hearings

A. USPTO Headquarters, Alexandria, Virginia

The USPTO headquarters campus is located in the Madison Building at 600 Dulany Street, Alexandria, Virginia, 22314. On the 9th floor of the east side of the Madison Building, there are three PTAB hearing rooms and an overflow room to accommodate hearings with a large audience. For questions about the USPTO headquarters, please call (571) 272-9797.

B. USPTO Midwest Regional Office, Detroit, Michigan

The Elijah J. McCoy Midwest Regional Office is located in the Stroh Building at 300 River Place Drive, Detroit, Michigan, 48207. There is one hearing room and an overflow room to accommodate hearings with a large audience. For questions about the Midwest Regional office please call (313) 446-6576.

C. USPTO Texas Regional Office, Dallas, Texas

The Texas Regional Office is located in the Terminal Annex Federal Building at 207 South Houston Street, Dallas, Texas, 75202. The Dallas office has one hearing room and an overflow room to accommodate hearings with a large audience. For questions about the Texas Regional office please call (469) 295-9000.

D. USPTO Rocky Mountain Regional Office, Denver, Colorado

The Rocky Mountain Regional Office is located in the Byron G. Rogers Federal Building at 1961 Stout Street, Denver, Colorado, 80294. The Denver office has one hearing room and an overflow room to accommodate hearings with a large audience. For questions about the Rocky Mountain Regional office please call (303) 297-4262.

E. USPTO Silicon Valley Regional Office, San Jose, California

The Silicon Valley Regional Office is located in the Wing Building of San Jose City Hall at 26 S. Fourth Street, San Jose, California, 95112. The Silicon Valley office has one hearing room and an overflow room to accommodate hearings with a large audience. For questions about the Silicon Valley Regional office please call (418) 918-9900.

III. Requesting oral hearing

A. Ex parte and reexamination appeals

In accordance with 37 CFR § 41.47(b) (ex parte and reexamination appeals) and 37 CFR § 41.73(b) (inter partes reexamination appeals) (collectively appeals), a Request for Oral Hearing must be filed as a separate paper and not with the Notice of Appeal or any other paper. The required fee, as set forth in 37 CFR § 41.20(b)(3), must be paid within the appropriate time period as set forth in 37 CFR § 41.47(a) (ex parte appeals) or 37 CFR § 41.73(a) (inter partes reexamination appeals). The time for requesting an oral hearing cannot be extended.

Should a party fail to comply with the procedures to request an oral hearing, the Board will issue an Order for a Non-Compliant Request for Oral Hearing. Upon receipt of such an Order, the party will need to file a petition under 37 CFR § 41.3 and the requisite fee under 37 CFR § 41.20(a) requesting that the hearing request be accepted. The petition is due within 14 days from the Order. *See* 37 CFR § 41.3(e). The Chief Judge or his or her designee will decide the petition. If

the petition is denied, a refund of the filing fee for a request for oral hearing will not be granted. If the request and fee are not filed as set forth above, the case will be assigned for consideration and the decision will be based on the briefs without an oral hearing. Appeals decided on the briefs are given the same consideration by the PTAB as appeals decided after an oral hearing. *See* 37 CFR § 41.47(a), § 1.73(c). A party's decision to request an oral hearing neither accelerates nor delays a decision for that appeal.

B. AIA trials

Each party to a proceeding will be afforded an opportunity to present their case before at least three Administrative Patent Judges (APJs) of the Board. The time for requesting an oral hearing is normally set in the Scheduling Order but may be modified on a case-by-case basis. A request for oral hearing must specify the issues to be argued and should include the amount of time a party considers sufficient to present its argument to the Board. *See* 37 CFR § 42.70(a).

IV. Notification of hearing: Ex parte and reexamination proceedings

A. Notice of Hearing

The PTAB will issue a Notice of Hearing to parties involved in ex parte and reexamination appeals once a case has been scheduled for oral argument. The notice is typically issued eight (8) weeks before the scheduled hearing session. The Notice of Hearing provides information about the scheduled hearing, including the date, time, and location of the hearing, appearance options, and general information about the oral hearing procedures before the Board.

Total argument time (including rebuttal time) is limited to twenty (20) minutes for ex parte and reexamination appeal proceedings and thirty (30) minutes for each party in inter partes reexamination appeal proceedings, unless otherwise directed by order of the Board.

If a party would like to request additional argument time, they should email a request to PTABHearings@uspto.gov. The request should set forth why the issues to be addressed at the oral hearing warrant additional time be granted prior to the oral hearing. The Board will then issue an order granting or denying the request. In the event that the request for additional argument time is denied, the Board panel in a case may nonetheless maintain the request under

consideration, and upon a renewed request by the party at the hearing's outset, grant additional time in the course of the hearing if the panel finds that doing so would help clarify the issues being discussed.

B. Appellant Response to Notice of Hearing

The Notice of Hearing states an Appellant Response to Notice of Hearing is due twenty-one (21) days from the issuance of the Notice. In inter partes reexaminations, copies of all communications with the Board must be served on opposing counsel. *See* 37 CFR § 90.3.

Arguing counsel must submit an Appellant Response to Notice of Hearing and provide their response to the following hearing options. Should a party require additional assistance to submit appeal documents, they should contact the Board at (571) 272-9797 or via email at PTABHearings@uspto.gov.

1. In-person hearing

A party may elect to appear in-person at the designated hearing location, which is identified in the Notice of Hearing. At least one APJ will appear in-person and one or more APJs may participate remotely.

A party may also appear in-person from any USPTO location, other than the designated hearing location, subject to availability and approval. A party's selection, and the PTAB's approval to use a USPTO location other than the designated hearing location, does not guarantee that an APJ assigned to the appeal will be physically present at that location, and the hearing itself may be conducted via video.

2. Video hearing

A party may elect to participate in the oral hearing via a videoconference connection. The PTAB will issue an order providing instructions on how to connect to the hearing after receipt of the video hearing request.

3. Telephonic hearing

A party may elect to participate in the oral hearing telephonically. The PTAB will issue an order providing instructions on how to connect to the hearing after receipt of a telephonic hearing request.

4. Waiver of hearing

A party can waive the hearing if it has decided an oral hearing is no longer necessary. This waiver allows the panel to decide the case on the briefs without waiting for the oral hearing date.

If the hearing has not yet been scheduled (i.e., the party has not yet received a Notice of Hearing), the party can file a Request to Waive Oral Hearing. If the party has already received a Notice of Hearing, the party can indicate that attendance is being waived on the Appellant Response to Notice of Hearing.

5. Reschedule requests

A party seeking to reschedule a hearing must respond to the Notice of Hearing and select to reschedule the hearing. In addition to annotating a reschedule request on the Appellant Response to Notice of Hearing, the party also must file a rescheduling request as a separate paper. In that paper, the party should set forth the reason(s) for the reschedule request with sufficient specificity for the PTAB to reach a decision. A rescheduling request may optionally include dates the party would be able or unable to attend an oral hearing.

A party may submit a rescheduling request, as a separate paper, by any of the response methods set forth in the Notice of Hearing. If a party requires additional assistance to submit appeal documents, they should contact the PTAB at (571) 272-9797.

The Board will issue an order granting or denying the rescheduling request. Second requests for hearing postponement or rescheduling are usually treated as a waiver of the oral hearing.

If the rescheduling request is granted, the Board will issue a new Notice of Hearing setting forth the rescheduled hearing's new date, time, and scheduling information. In such cases, the party is required to respond to the new Notice of Hearing. The prior submission of the rescheduling request does NOT constitute a confirmation of attendance at the rescheduled hearing.

C. Special accommodations

Any special requests for audio-visual equipment (e.g., easel for posters, or an overhead projector) should be directed to PTABHearings@uspto.gov.

A party may also indicate any special accommodation requests, such as requests for deaf or hard-of-hearing individuals and blind or low vision individuals, and indicate how the PTAB may accommodate the special request.

D. Demonstratives

Demonstrative exhibits are neither required nor expected, but Appellant may use them to assist in the presentation of their case. If Appellant has any Power Point slides or other demonstratives, they must be submitted for inclusion into the record at least ten (10) days before the hearing date by submitting them through the USPTO Patent Center available at <https://patentcenter.uspto.gov>.

If provided to the Board, demonstrative exhibits must not include any information not previously made of record in the proceeding, and the Board will refuse to allow the use of demonstrative exhibits that do not comply with this requirement. *See, e.g.*, 37 C.F.R. § 41.47(e)(1), (2). In addition, a party must clearly mark all demonstratives with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer.

V. Notification of hearing: AIA trials

A. Notice of Hearing (Scheduling Order)

In an AIA trial, the Board will notify the parties of the date and location options of an oral hearing in a Scheduling Order. The Scheduling Order will generally indicate which hearing locations are available to hold an oral hearing and will provide guidance to the parties on expressing a location preference.

B. Request for Oral Argument

The time for requesting oral argument hearing is normally set forth in the Scheduling Order but may be modified on a case-by-case basis. A request for oral argument must specify the issues to be argued and should include the amount of time a party considers sufficient to present its argument to the Board. The Board expects to ordinarily provide for an hour of argument per side for a single proceeding, but a party may request more or less time, depending on the

circumstances of the case. See [Patent Trial and Appeal Board Consolidated Trial Practice Guide, November 2019](#) at 81.

The parties should state in their respective request for oral argument whether the party would prefer either a video hearing or an in-person hearing, and for in-person hearings, which available location the party would prefer. To the extent the parties disagree, they should meet and confer; if the dispute cannot be resolved by meeting and conferring, the parties should inform the Board of each party's individual preferences. The Board will notify the parties of their decision, in accordance with current office policy.

The Board panel in a case may also hold a conference call with the parties, after the Scheduling Order has been issued, if it is necessary to consider a change to the scheduled date or location of the oral hearing. Any changes to the oral hearing date and location after the issuance of the initial Scheduling Order will be reflected in a separate order from the panel.

C. Hearing Order

When an oral hearing is requested, the PTAB will notify the parties of the finalized hearing date, time, and location in a Hearing Order. Once the Board has issued a Hearing Order, parties requiring a different arrangement should contact the Board with their request.

D. Reschedule/Waiver request

After submitting a request for oral hearing, parties requesting to reschedule or decline an oral hearing should email Trials@uspto.gov to arrange a telephone conference with the panel members handling the matter and opposing counsel, to discuss the party's request. The parties should attempt to resolve disputes amongst themselves before contacting the PTAB.

E. Special accommodations

Any special requests for audio-visual equipment (e.g., easel for posters, or an overhead projector) should be directed to PTABHearings@uspto.gov.

A party may also indicate any special accommodation requests, such as requests for deaf or hard-of-hearing individuals and blind or low vision individuals, and indicate how the PTAB may accommodate the special request.

Any special requests must be presented in a separate communication at least five (5) business days before the hearing date.

F. Demonstratives

Demonstrative exhibits should be filed in the record in accordance with the orders of the panel as outlined in the Hearing Order.

Demonstrative exhibits used at the oral hearing are aids and not evidence, and should be clearly marked as such. For example, each slide of a demonstrative exhibit must 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. Accelaron, 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").

VI. Authorized persons to present oral arguments

A. General

One or more registered patent practitioners or attorneys (e.g., representing appellants, petitioners, or patent owner) of record may present arguments at the oral hearing.

B. Pro hac vice

Upon request, the PTAB may authorize a person other than a registered patent practitioner to appear as counsel in a specific proceeding. *See* 37 CFR § 41.5(a) (addressing reexaminations and ex parte appeals); 37 CFR § 42.10(c) (addressing trial practice and procedure for AIA trial proceedings). A registered practitioner may request pro hac vice admission of a non-registered counsel in order for them to accompany the registered practitioner and present arguments. A request for pro hac vice must be filed in the form of a petition in an ex parte appeal, and in the form of a motion in an AIA trial, as discussed in more detail below. The PTAB's decision to grant any pro hac vice request is discretionary. Even if pro hac vice admission is granted, a registered patent practitioner of record must still be present at the oral hearing, unless authorized by the Board.

For AIA trials, a motion for pro hac vice admission of a non-registered practitioner must be granted in advance of an oral hearing, and that practitioner must be

designated as back-up counsel of record (by filling updated mandatory notice information under 37 CFR § 42.8). The motion also must address requirements for pro hac vice admission as stated in the guidelines set forth in IPR2013-00639, Order Authorizing Motion for Pro Hac Vice Admission, Paper 7, Oct. 15, 2013, [http:// www.uspto.gov/ip/boards/bpai/ipr201300639_authorize_pro_hac_new_rules.pdf](http://www.uspto.gov/ip/boards/bpai/ipr201300639_authorize_pro_hac_new_rules.pdf).

For reexaminations and ex parte appeals, petitions for pro hac vice admission are filed as a separate paper in accordance with 37 CFR §§ 1.6 and 41.3. Preferably, notice of a petition is also provided to the attention of the PTAB's hearings clerk via email at PTABHearings@uspto.gov. Should a party require additional assistance to submit appeal documents, they may contact the hearings clerk at (571) 272-9797. In addition to the requirements set forth under 37 CFR § 41.3, the petition should confirm that the practitioner to be admitted has read and is familiar with 37 CFR, Part 41, particularly, §§ 41.30-41.54, and 37 CFR §§11.19(a) and 11.101 et seq., as well as set forth good cause as to why pro hac vice admission should be granted. A petition may request that the petition fee under 37 CFR § 41.3 (c) be waived for economic hardship and/or the timeliness requirement of 37 CFR § 41.3(e)(i) be waived in the event of an emergency. In response to the petition, the Board will issue an order granting or denying the petition.

C. Legal Experience and Advancement Program (LEAP)

The Board has established LEAP to foster development of the next generation of patent practitioners by creating opportunities to gain the proper skills and experience in oral arguments before the Board. The Board defines a LEAP practitioner as having three (3) or fewer "substantive" oral hearing arguments in any federal tribunal, including PTAB. See [Legal Experience and Advancement Program \(LEAP\) | USPTO](#) (providing details regarding eligibility and LEAP participation requests).

Parties before the Board (in both ex parte appeals and AIA trial proceedings) are encouraged to participate in LEAP by allowing LEAP practitioners to conduct at least a portion of an oral hearing. In exchange, the Board will grant up to fifteen (15) minutes of additional oral argument time to that party.

Parties may request to participate in LEAP by emailing PTABHearings@uspto.gov at least five (5) days before the hearing. In every case, the LEAP practitioner shall verify eligibility for the program by filing a completed verification form into the record. Parties may obtain more information about how to participate in LEAP by

visiting our [LEAP website](#), which provides a sample combined request and verification form.

A LEAP practitioner may conduct the entire argument or share time with other counsel, provided that the LEAP practitioner is offered a meaningful and substantive opportunity to argue before the Board. The party has the discretion as to the type and quantity of oral argument that will be conducted by the LEAP practitioner. Regardless of the quantity argued by the LEAP practitioner compared to more experienced counsel, the Board requires a registered patent practitioner of record to be present, unless authorized by the Board.

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, as needed, during the hearing, and to clarify any statements on the record before the conclusion of the hearing. Importantly, 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.

In instances where an advocate does not meet the LEAP eligibility requirement, but nonetheless has a basis for considering themselves to be in the category of advocates that this program is intended to assist, the Board encourages argument by such advocates during oral hearings. Additional argument time will not be provided in these circumstances, however, as with LEAP, a party may request to share time with counsel and the Board will permit more experienced counsel to provide some assistance, as needed, during the oral hearing, and to clarify any statements on the record before the conclusion of the oral hearing.

D. Unaccompanied registered patent practitioner (appeal proceedings)

A registered patent practitioner, who is not of record, may present oral arguments without change to or submission of a new power of attorney. To do so, the registered patent practitioner of record may grant authority to the registered practitioner who is not of record by submitting a written authorization in the file. The authorization shall include the name and registration number of the practitioner who will be arguing.

E. Primary patent examiner (appeal proceedings)

In the event a primary examiner wishes to present arguments at an oral hearing, they must follow MPEP 12.279.03, and make a formal request as a separate letter on a form PTOL-90. The form shall be served on Appellant and also submitted to PTABHearings@uspto.gov.

F. Inventor (appeal proceedings)

1. Pro Se

Inventors who are unrepresented by a registered patent practitioner have the right to represent themselves, and present oral arguments before the PTAB.

2. Represented by patent practitioner

If an inventor is represented, the registered patent practitioner(s) of record may request that the inventor accompany them and participate at the oral hearing for an ex parte appeal (e.g., when the inventors can better answer technical questions posed by the panel). The practitioner should submit such a request prior to the hearing date to PTABHearings@uspto.gov. An order will be issued granting or denying the request.

3. Represented by patent practitioner: Rights to invention are assigned to another

If an inventor wishes to present arguments at the oral hearing, but the inventor is represented by a registered patent practitioner and the inventor has assigned any rights of the invention to another, the registered patent practitioner must file a petition for pro hac vice admission of the inventor in accordance with 37 CFR §§ 1.6 and 41.3. Preferably, notice of a petition filing is also provided to PTABHearings@uspto.gov. The pro hac vice petition should include authorization from all assignees.

VII. Attending hearings

A. Check-In

All visitors to USPTO offices must undergo security screening. All visitors are required to provide a valid form of [government-issued identification](#) to gain

access. Patent practitioners should counsel their clients about the PTAB visitation procedures (e.g., appropriate hearing room etiquette and attire). Security procedures vary in each regional office. Therefore, please arrive at least 30 minutes before the scheduled hearing.

After passing through security, all parties and public attendees will be directed to a waiting area. A PTAB usher will assist the parties with sign in procedures and provide any requested information. All parties and public attendees will remain in the hearings waiting area until instructed to enter the hearing room.

B. Session schedule

1. Ex parte appeal sessions

Ex parte appeal hearings are typically scheduled in hearing sessions with up to six appeal proceedings. The usher will escort attendees into the hearing room when it is time for their hearing to begin. The patent practitioner will be directed to the podium to present oral argument. Attendees will be directed to have a seat in the gallery of the hearing room.

Regardless of the position of an appeal on the schedule, parties must be present and check in with the PTAB usher before the designated start of the session.

2. AIA trial proceedings

For AIA trials, all parties and public attendees will be permitted in the hearing room approximately fifteen (15) minutes prior to the start of the session. Parties are given this time to set up and ensure computers are functional for presentation purposes. Late entry into the hearing room is generally not permitted.

C. Public access

Many PTAB proceedings may be of interest to various audiences not directly involved with the proceeding. The PTAB supports the observation of any public proceedings by internal and external stakeholders (e.g., in-person, remotely by videoconference, or from any USPTO office location). Non-public hearings are closed to the general public and only parties associated with the case are allowed to observe.

1. In-person

Members of the public may view any public hearing at the designated hearing location. All visitors to USPTO offices must undergo security screening. All visitors are required to provide a valid form of [government-issued identification](#) to gain access. The public must also comply with appropriate hearing room etiquette and attire.

After passing through security, public attendees will be directed to a waiting area and remain there until instructed to enter the hearing room.

In addition to viewing from the designated hearing location, the USPTO's office locations are also generally available for any member of the public to view a hearing, subject to room availability and advance coordination with the PTAB.

To request in-person viewing from a location other than the designated hearing location, the party must submit a request to PTABHearings@uspto.gov at least five (5) days before the hearing. The PTAB will notify the party if the request for remote viewing is granted. Due to the availability of resources, it may not be possible to grant the request in all instances.

2. Remote attendance by video

Members of the public may request to remotely view any public hearing. The Board generally grants request if resources are available.

To request remote viewing, a requestor must submit a request to PTABHearings@uspto.gov at least five (5) days before the hearing. The PTAB will notify the requestor if the request for remote viewing is granted. Due to the availability of resources, it may not be possible to grant the request in all instances.

Please note that a request for remote viewing does not allow the requestor to participate in the hearing.

D. Hearing room setup

1. Counsel tables and podium

Lead and backup counsel may sit at the counsel tables. Each table has a power outlet that counsel may use. Counsel will present oral arguments from the podium. The podium has HDMI and USB connection cables.

2. Technical capabilities

Hearing rooms are equipped with projectors for slide presentations, which are operated from the podium. For PowerPoint and other computer-based presentations, the party must provide their own laptops. The hearing rooms do not have internet access capabilities, therefore, all information must be stored on the party's laptop.

3. General seating

General seating in a hearing room is available on a first-come, first-served basis. The Board does not reserve seating during oral hearings for the public or by special request of arguing counsel. In the event that a hearing room reaches capacity, the Board will attempt to establish an overflow room, subject to the availability of the space.

In the event that a party to a proceeding expects more than five (5) in-person attendees for a proceeding, please contact PTABHearings@uspto.gov at least five (5) days before the hearing to request accommodation.

E. Hearing room decorum and guidelines

The PTAB requires all attendees to maintain a professional appearance appropriate for appearing before a tribunal. Counsel appearing before a panel are required to wear formal business attire. Observers at a hearing are required to wear either formal business attire or business casual attire. Business casual attire does not include jeans, t-shirts, tank tops, athletic shoes, sneakers, or flip flops. Questions regarding dress code should be addressed to PTABHearings@uspto.gov prior to the date of the hearing.

Professional conduct and respect for general guidelines allow hearings to flow efficiently and promptly. The panel reserves the right to remove anyone who does not follow these guidelines.

- Recording of any PTAB hearing is prohibited.
- Please turn off cell phones and electronic devices, except those used for demonstratives at the counsel table. Use of electronic devices in the gallery is prohibited.
- No food or drink, except water, is permitted in the hearing rooms.
- Unless indicated by the panel, once the hearing begins, there will be no entries or exits from the hearing rooms. This minimizes interruptions and distractions.
- During the hearing, excessive talking or loud outbursts are prohibited. No one is to be heard except the panel or counsel presenting an argument to the panel.

F. Oral hearing transcript

Oral hearing transcripts for all PTAB proceedings are posted to Patent Center for appeals and to P-TACTS for AIA trial proceedings before a decision is issued. The PTAB does NOT provide the parties or the public the name of the court reporter agency that is being used for the oral hearing.

Further questions regarding oral hearing transcripts should be directed to PTABHearings@uspto.gov.

VIII. Guidelines for counsel during argument

The following guidelines are provided to assist counsel in making the best use of the allotted time at argument.

- Answer the question being asked. Although a prepared presentation focuses on the points that you find most important, those may not be the areas of greatest interest to the panel.
- Begin the discussion with the critical issues, not extensive background information. The APJs are familiar with the record.
- Consider how demonstrative exhibits will be useful to your presentation. When referring to demonstratives, cite to the specific slide or page number.

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- When discussing exhibits of record during the hearing, consider referring to specific pages or pin-point cites in the exhibits, as applicable, so the APJs can easily find what you are discussing, and the hearing transcript reflects such information.
 - Do not avoid the difficult issues. The APJs will be most interested in the weakest parts of your case, because those are the points on which the outcome of the case may turn.
 - Ensure that you are familiar with the entire record, not just those portions essential to your argument.
 - Focus on your substantive arguments, based on the evidence of record, and where and how you have relied on that evidence, rather than arguments about the process that led you to the PTAB.