



For the First Time, The Patent Trial and Appeal Board Allows Live Testimony in an Inter Partes Review

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Reading Time : **1 min**

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1. The importance of the witness's testimony to the case (i.e., whether it may be case-dispositive) and
2. Whether the live testimony is from a fact witness.

If live testimony is allowed, the testimony will be limited to crossexamination and redirect. The witness's previously submitted declaration will serve as the direct testimony. The Board reasoned that it was allowing live testimony in this case because the named inventor was the sole inventor on the patent in the current proceeding and a related proceeding involving the same parties and technology. The inventor was the petitioner's principal fact witness because of the declaration he submitted in both cases attempting to antedate the only two references relied on by the petitioner in its challenge to patentability. The Board concluded that the inventor's testimony was key and may be case-dispositive.

K40 Elecs., LLC v. Escort, Inc., IPR201300203 (PTAB May 21, 2014) [Giannetti (opinion); Perry; Ward]

Categories

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