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Reflections on the USPTO's LEAP

In an effort to provide opportunities for more junior practitioners to gain experience in proceedings before the PTAB, the USPTO earlier this year established the Legal Experience and Advancement Program (LEAP). To encourage meaningful participation of young patent attorneys and agents in oral advocacy, the PTAB grants additional argument time to parties that choose to participate in LEAP. The PTAB also provides training opportunities for junior practitioners through LEAP. Notably, the PTAB has organized mock oral arguments, wherein pairs of practitioners argue in mock review proceedings before a panel of PTAB judges. The judges then provide individualized feedback for the advocates.

I participated in the October mock arguments and presented arguments in a fictional *inter partes* review, where two pairs of attorneys faced off as advocates for petitioner or patent owner. The case file, which included a petition, institution decision, response, and reply as well as prior art references and declarations, was prepared by the PTAB. A panel of three PTAB judges heard our arguments. Following the arguments, the judges provided their feedback for each of the four advocates.

Although LEAP is meant for junior patent attorneys and agents, the judges' feedback includes helpful guidance for all practitioners who argue before the PTAB. Here is my list of takeaways:

- Time management is a common point of difficulty. When preparing for oral arguments, be sure to factor in time for the judges' questions. When faced with questions, save time by directly answering the question and returning to your point. You can also save time by omitting a discussion of unnecessary background facts, as the judges will already be familiar with the record.
- Providing a roadmap of the individual points of your arguments as a great way to open and to ensure both you and the judges stay on track.
- Do not be surprised by a "hot" bench—the judges very often come into the oral arguments having thoroughly reviewed the record and intending to ask clarifying questions. Do not get offended or upset by the judges' questions. The judges are not intentionally interrupting you to throw off your argument.
- Do not overstate the evidence or evidentiary burden, but do not minimize them either (e.g., do not argue that *merely* a preponderance of the evidence is required).
- Remember to always be respectful and polite to opposing counsel. The judges can tell when there is animosity between the parties, and it reflects poorly on all involved.
- Do not be afraid to concede when you have misspoken or otherwise made a mistake. Similarly, do not be afraid to say that you will follow up on a specific point if you need to check the record before answering correctly (e.g., "Your honor, co-counsel will find the exact citation in the record, and we

can address it during rebuttal"). If a point completely catches you off guard and you don't have case law ready, you can suggest providing supplemental briefing on the issue after oral arguments.

- The COVID-19 pandemic has presented a number of challenges for oral advocates. When arguing via videoconference, be careful to look directly into the camera and to mute yourself when you are not immediately speaking. Hand gestures and other non-verbal cues remain useful, even on video. Finally, it is important to remember that the common rules of dress and decorum apply equally to virtual arguments as they do to in-person oral arguments.

The PTAB's LEAP provides meaningful and substantive opportunities for junior practitioners to hone their oral advocacy skills. Additional information on the program, including how to get involved, can be accessed on the USPTO's website.