

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
Petitioner,

v.

BETTER FOOD CHOICES LLC,
Patent Owner.

Case CBM2015-00071
Patent 5,841,115

Before MICHAEL P. TIERNEY, GLENN J. PERRY, and MINN CHUNG,
Administrative Patent Judges.

CHUNG, *Administrative Patent Judge.*

ORDER
Trial Hearing
37 C.F.R. § 42.70

A trial in this proceeding was instituted on August 20, 2015. Paper 10. A Scheduling Order, also issued on August 20, 2015, set the date for oral hearing to May 19, 2016, if hearing is requested by the parties and granted by the Board. Paper 11. Both parties have requested oral hearing pursuant to 37 C.F.R. § 42.70. Papers 22, 23, and 24. Those requests are GRANTED.

A hearing for this proceeding will be held on May 19, 2016, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearing will commence at 1:00 PM Eastern Time, and it will be open to the public for in-person attendance. In-person attendance will be accommodated on a first-come-first-served basis. If the parties have any concern about disclosing confidential information, they are to contact the Board at least five (5) business days in advance of the hearing to discuss the matter.

Each party will have 45 minutes of total argument time. Petitioner bears the ultimate burden of proof that the claims at issue are unpatentable. Therefore, Petitioner will proceed first to present its case with regard to the challenged claims and grounds on which we instituted trial. Patent Owner then will respond to Petitioner's case. Petitioner may reserve rebuttal time.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served five (5) business days before the hearing. The parties shall file copies of any demonstrative exhibits at the Board at least three (3) business days prior to the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing. The demonstrative exhibits in this case are not

CBM2015-00071
Patent 5,841,115

evidence and are intended only to assist the parties in presenting their oral argument to the Board.

The parties must file any objections to the demonstratives with the Board at least two (2) business days before the hearing. Any objection to the demonstrative exhibits that is not presented timely will be considered waived. The objections should identify with particularity which demonstratives are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. The Board will consider the objections and schedule a conference if necessary, or the Board may reserve ruling until after the oral argument. 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, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

Any special requests for audio visual equipment should be directed to Trials@uspto.gov. **Requests for audio-visual equipment are to be made five (5) business days in advance of the hearing date in a separate communication directed to the above email address. If the request is not received timely, the equipment may not be available on the day of the hearing.**

The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location and that if a demonstrative is not filed or otherwise made fully available or visible to the judge(s) presiding over the hearing remotely, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at 571-272-9797. The parties are

CBM2015-00071

Patent 5,841,115

reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to avoid confusion, and to ensure the clarity and accuracy of the reporter's transcript.

The Board expects lead counsel for each party to be present at oral hearing, although any backup counsel may make the actual presentation, in whole or in part. If either party anticipates that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than three (3) business days prior to the oral hearing to discuss the matter.

CBM2015-00071

Patent 5,841,115

PETITIONER:

Ryan McBrayer

Bing Ai

PERKINS COIE LLP

rmcbrayer@perkinscoie.com

Bi-ptab@perkinscoie.com

PATENT OWNER:

Robert Huntsman

HUNTSMAN LAW GROUP, PLLC

bobh@hunstmanlg.com