

RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT TRIAL AND APPEAL BOARD

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GOOGLE, INC.,

Petitioner,

v.

BETTER FOOD CHOICES, LLC,

Patent Owner.

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Case CBM2015-00071

Patent 5,841,115

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Oral Hearing held on: Thursday, May 19, 2016

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

The above-entitled matter came on for hearing on Thursday, May 19, 2016, at 1:03 p.m., Hearing Room B, taken at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Reported by: Carla L. Andrews

APPEARANCES:

On behalf of the Petitioner:

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On behalf of the Patent Owner:

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1 P-R-O-C-E-E-D-I-N-G-S

2 (1:03 p.m.)

3 JUDGE TIERNEY: All right, everyone,  
4 welcome to the hearing today for CBM 2015-00071.

5 Before I begin today, do we have any  
6 procedural questions before I begin? I believe each side  
7 had 45 minutes today, and they can reserve time for  
8 rebuttal. I would like to know if there are any procedural  
9 questions we need out of way before we start the hearing?

10 MR. McBRAYER: Your Honor, Ryan  
11 McBrayer for Petitioner Google. One procedural question  
12 that would help us to have resolved is yesterday Petitioner  
13 Google filed a consent -- actually, two days ago -- filed a  
14 consent motion to substitute in a set of new  
15 demonstratives for trial. And we have those cued up for  
16 presentation.

17 The difference between the previously filed  
18 demonstratives and these are that these addressed a  
19 Federal Circuit court case that was decided just two days  
20 ago that impacts the outcome of this proceeding.

21 So we want to verify that our motion is  
22 granted so that we can present the updated demonstratives.  
23 The parties have stipulated that Google can, but we  
24 wanted to confirm that with the Board.

1 JUDGE TIERNEY: Judge Chung, do you have  
2 any objection?

3 JUDGE CHUNG: No objection.

4 JUDGE TIERNEY: Judge Perry, do you have  
5 any objection?

6 JUDGE PERRY: No.

7 JUDGE TIERNEY: Motion granted.

8 Are there any other procedural issues?

9 MR. McBRAYER: Not from petitioner, Your  
10 Honor.

11 MR. HUNTSMAN: I just wanted to confirm  
12 with the Board I have asked Mr. Shepley, who is the  
13 inventor, to assist me at counsel table. And we discussed  
14 this with someone on the phone earlier. But I just wanted  
15 to make sure it is appropriate for him assisting me at the  
16 table today.

17 JUDGE TIERNEY: I have no objection. Judge  
18 Perry?

19 JUDGE PERRY: No problem.

20 JUDGE TIERNEY: Judge Chung?

21 JUDGE CHUNG: No objection.

22 JUDGE TIERNEY: No objections today.

23 I believe that -- one last time. Any further  
24 procedural issues? All right.

25 We will begin with the petitioner.

1           And you have 45 minutes and reserve time for  
2           rebuttal. If you feel like you need additional time, let us  
3           know. The same goes for the patent owner. I will not cut  
4           you off mid-sentence. But just let us know if you need  
5           additional time. We realize that we have quite a bit to  
6           cover. But we will start with the 45-minute mark.

7           Would you like to reserve any time for  
8           rebuttal?

9           MR. McBRAYER: Yes, Your Honor. We will  
10          be reserving time for rebuttal. And we hope not to take  
11          up our full 45 minutes at all today.

12          JUDGE TIERNEY: Okay.

13          MR. McBRAYER: With leave of the Board, I  
14          will let my co-counsel warn me. We hope to end this  
15          initial presentation after about 15 minutes, depending  
16          upon the Board's questions.

17          JUDGE TIERNEY: Okay. Begin when you  
18          are ready.

19          MR. McBRAYER: May it please the Board, I  
20          am Ryan McBrayer representing Petitioner Google.

21          And with me here today are my co-counsel  
22          John Putman also of Perkins Coie. And from Google,  
23          Victor Shu, sitting in the back row to Your Honor's left.

24          The Board should decide in Google's favor  
25          today and can decide in Google's favor based solely on

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