

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAUTILUS HYOSUNG, INC.,
Petitioner,

v.

DIEBOLD NIXDORF, INC.,
Patent Owner.

Case IPR2016-00529 (Patent 7,229,010)
Case IPR2016-00530 (Patent 7,229,010)
Case CBM2016-00034 (Patent 7,314,163)

Record of Oral Hearing
Held: Thursday, May 4, 2017

Before BARBARA A. BENOIT, GEORGIANNA W. BRADEN and
KERRY BEGLEY, Administrative Patent Judges.

The above-entitled matter came on for hearing on Thursday, May 4, 2017,
commencing at 11:00 a.m. at the U.S. Patent and Trademark Office, 600
Dulany Street, Alexandria, Virginia.

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

2 JUDGE BENOIT: Good morning. We are convened for
3 oral argument in CBM2016-00034 which challenges US Patent
4 7,314,163. I'm Judge Benoit. With me in Alexandria is
5 Judge Begley. And Judge Braden is appearing by video.

6 So let's start with appearances. Petitioner.

7 MR. RIFFE: Good morning, Your Honor. Tim Riffe,
8 lead counsel on behalf of petitioner, Nautilus Hyosung. And
9 with me today and will be speaking is Nick Jepsen.

10 JUDGE BENOIT: Welcome. Patent Owner.

11 MR. KELLY: Hi, Your Honor. My name is Chris
12 Kelly. I'm here on behalf of the patent owner, Diebold
13 Nixdorf.

14 With me I have -- I'm from the firm Alston & Bird.
15 With me I have David Frist, Jason Cooper and Josh Weeks also
16 of Alston & Bird. And we also have Ed Crooks of Diebold
17 Nixdorf here with us today.

18 JUDGE BENOIT: All right. Welcome.

19 MR. KELLY: Thank you.

20 JUDGE BENOIT: So each side will have 45 minutes
21 to argue. Petitioner has the ultimate burden of
22 establishing unpatentability and will argue first and may

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1 reserve rebuttal time.

2 But before we begin arguments we had a couple of
3 administrative matters to take care of. We granted two pro
4 hac -- pro hac motions for Mr. Tishman and Mr. Wheeler. I
5 noticed that as of this morning that PTAB End to End had not
6 been updated.

7 If you could work with trials to take care of that
8 and get counsel information updated. I understand there's
9 some process that requires something from the petitioner's
10 side and something from the PTAB trials staff to get that
11 done. But if you would take care of it, I'd appreciate
12 that.

13 MR. RIFFE: Point of clarification, Your Honor.
14 Will that prevent those two individuals from making
15 arguments before the board this morning?

16 JUDGE BENOIT: No. They have been admitted.
17 That's just a housekeeping matter.

18 MR. RIFFE: Thank you, Your Honor.

19 JUDGE BENOIT: The panel also would like an update
20 as to the status of the ITC and district court cases
21 involving the challenged patent.

22 Patent owner, can you give us a current status?

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1 MR. FRIST: Good morning, Your Honors. David
2 Frist. The ITC case as to the 163 patent, the ITC
3 administrative law judge found the 163 patent invalid under
4 101. The commission then upheld that ruling. The patent
5 owner did not appeal that to the federal circuit. And the
6 district court is still stayed in light of the other patents
7 in this case.

8 So as to the 163 patent and the ITC, they have
9 made their finding. The district court is still alive. And
10 we're here today, as I'm sure you know, to argue the 101
11 issue in front of Your Honors.

12 JUDGE BENOIT: All right. Thank you.

13 I also would like to make sure that we understand
14 all the papers that have been filed. You know, we have the
15 new patents and -- and system. I want to make sure we're
16 not overlooking anything.

17 So, petitioner, I wanted to confirm with you that
18 you had not filed a motion to exclude any observations on
19 cross-examination or declaration testimony in support of
20 your reply.

21 MR. RIFFE: That's correct, Your Honor.

22 JUDGE BENOIT: Thank you. And I'm not implying at

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