

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAUTILUS HYOSUNG, INC.,
Petitioner,

v.

DIEBOLD NIXDORF, INC.,
Patent Owner.

Case CBM2016-00034
Patent 7,314,163

Record of Oral Hearing
Held: May 4, 2017

BEFORE: BARBARA A. BENOIT, GEORGIANNA W. BRADEN
and KERRY BEGLEY, *Administrative Patent Judges.*

Case CBM2016-00034
Patent 7,314,163

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1 PROCEEDINGS

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
23 reserve rebuttal time.

24 But before we begin arguments we had a couple of
25 administrative matters to take care of. We granted two pro
26 hac motions for Mr. Tishman and Mr. Wheeler. I

1 noticed that as of this morning that PTAB End to End had not
2 been updated.

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

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

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

14 MR. RIFFE: Thank you, Your Honor.

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

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

19 MR. FRIST: Good morning, Your Honors. David
20 Frist. The ITC case as to the 163 patent, the ITC
21 administrative law judge found the 163 patent invalid under
22 101. The commission then upheld that ruling. The patent
23 owner did not appeal that to the federal circuit. And the
24 district court is still stayed in light of the other patents
25 in this case.

26 So as to the 163 patent and the ITC, they have

1 made their finding. The district court is still alive. And
2 we're here today, as I'm sure you know, to argue the 101
3 issue in front of Your Honors.

4 JUDGE BENOIT: All right. Thank you.

5 I also would like to make sure that we understand
6 all the papers that have been filed. You know, we have the
7 new PTAB end-to-end system. I want to make sure we're not
8 overlooking anything.

9 Petitioner, I wanted to confirm with you that
10 you had not filed a motion to exclude any observations on
11 cross-examination or declaration testimony in support of
12 your reply.

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

14 JUDGE BENOIT: Thank you. And I'm not implying at
15 all that any of those papers should have been filed. I just
16 wanted to make sure I understand what has been filed.

17 In terms of patent owner, I understand that you
18 have not filed a motion to exclude or any observations on
19 deposition testimony or a motion to amend. Is that correct?

20 MR. KELLY: That's correct, Your Honor.

21 JUDGE BENOIT: And, again, I'm not implying that
22 any of those papers should have been filed; just making sure
23 that we have kept track of the administrative papers in the
24 system.

25 MR. KELLY: Understood. Thank you.

26 JUDGE BENOIT: All right. With those

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