

RECORD OF ORAL HEARING  
UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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U.S. ENDOSCOPY GROUP, INC.,

Petitioner,

v.

CDX DIAGNOSTICS, INC.,

Patent Owner.

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Case IPR2014-00639 (Patent 6,676,609)

Case IPR2014-00641 (Patent 7,004,913)

Case IPR2014-00642 (Patent 6,258,044)

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Technology Center 3700

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Oral Hearing Held on Thursday, May 21, 2015

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Before: PHILLIP J. KAUFFMAN, BARRY L. GROSSMAN, and  
SCOTT DANIELS (via video link), *Administrative Patent Judges*.

The above-entitled matter came on for hearing on Thursday, May 21,  
2015, at 1:00 p.m., in Hearing Room D, taken at the U.S. Patent and  
Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case IPR2014-00639 (Patent 6,676,609)  
Case IPR2014-00641 (Patent 7,004,913)  
Case IPR2014-00642 (Patent 6,258,044)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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P R O C E E D I N G S

(1:00 p.m.)

JUDGE KAUFFMAN: I am Judge Kauffman. This is Judge Grossman. With us via video from New Hampshire is Judge Daniels.

Judge Kamholz was on the case but he has been replaced by Judge Daniels. It has nothing to do with the merits of the case or any misbehavior by Judge Kamholz. It is just an ordinary swap-out.

Has the court reporter had an opportunity to get a business card from each side? You have? Thank you.

I would like for the Patent Owner to introduce themselves, please.

MR. BERGER: I'm Peter Berger, lead counsel. I am from the firm of Levisohn Berger. Tuvia Rotberg in the corner, he is also from our firm.

David Barr, Kaye Scholer, will be doing the oral argument. Sitting at the table is David Soofian, and James Blank from Kaye Scholer is also here.

JUDGE KAUFFMAN: Thank you.

MR. BERGER: Thank you.

JUDGE KAUFFMAN: And for Petitioner, please.

MR. TUCKER: Good afternoon, Your Honor. I'm Todd Tucker from Calfee, Halter & Griswold in Cleveland.

Case IPR2014-00639 (Patent 6,676,609)  
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1 With me is my partner Mark McDougall. I will be speaking  
2 on behalf of Petitioner, United States Endoscopy Group.

3 And with us from the United States Endoscopy  
4 Group is Craig Moore, who is General Counsel of U.S.  
5 Endoscopy, as well as Associate General Counsel, Health Care  
6 Division, for U.S. Endoscopy's parent company, STERIS  
7 Corporation.

8 JUDGE KAUFFMAN: Thank you, and welcome. I  
9 want to cover a few things before we get started. I am hearing  
10 fairly frequently from Petitioners that when there is any  
11 element that hasn't been addressed by Patent Owner, that the  
12 Board should consider that element as proven.

13 And that's not how I understand the law. I don't  
14 think that's how the rest of the Panel understands the law.

15 So, yes, the Patent Owner's arguments that are not  
16 made are waived, but the standard for this proceeding is  
17 preponderance of the evidence, and the Panel will decide if  
18 the Petitioner has shown that, even if the Patent Owner says  
19 nothing about a particular element, so that's the standard even  
20 where there hasn't been an argument.

21 I understand that there were objections to Patent  
22 Owner's demonstratives and there is a new set of  
23 demonstratives, so, Patent Owner, does that mean the  
24 objections have been cured to those demonstratives? Are  
25 there no longer any objections?

1           MR. BARR: It is my understanding that there was  
2 a meet-and-confer, two meet-and-confers, and we resolved  
3 certain objections that both sides had. And then I believe that  
4 Petitioners still have certain objections and they lodged those  
5 with the Board after we had our meet-and-confer.

6           So they still have -- they can speak for themselves  
7 -- but they still have objections to some of our slides.

8           JUDGE KAUFFMAN: Okay. I misunderstood the  
9 sequence then. So, Petitioner, your objections were done after  
10 the revision of the demonstratives?

11          MR. TUCKER: That's correct, Your Honor.

12          JUDGE KAUFFMAN: And you still have those  
13 objections?

14          MR. TUCKER: Some were removed but we still  
15 have some that are pending.

16          JUDGE KAUFFMAN: And is this something that  
17 we need to talk about today?

18          MR. TUCKER: Well, they are mostly to the -- the  
19 slides appear to be forming new arguments that are not part of  
20 the paper record. They are certainly not characterizations that  
21 were made while the papers were being formulated in this  
22 case.

23                 We want to lodge the objections, and I wanted  
24 guidance from the Board should -- if the new arguments are,  
25 indeed, made -- should we object again during this hearing or

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