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IPR2015-00774, Paper No. 34

IPR2015-00958, Paper No. 34

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May 24, 2016

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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J SQUARED, INC. d/b/a UNIVERSITY LOFT COMPANY,

Petitioner,

vs.

SAUDER MANUFACTURING COMPANY,

Patent Owner.

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Case IPR2015-00774

Case IPR2015-00958

Patent 8,585,136

Technology Center 3600

Oral Hearing Held: Thursday, April 21, 2016

Before: LINDA E. HORNER, JOSIAH C. COCKS, and  
JAMES A. WORTH, Administrative Patent Judges.

The above-entitled matter came on for hearing on Thursday,  
April 21, 2016, at 2:00 p.m., Hearing Room A, taken at the U.S. Patent and  
Trademark Office, 600 Dulany Street, Alexandria, Virginia.

REPORTED BY: RAYMOND G. BRYNTESON, RMR,  
CRR, RDR

APPEARANCES:

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PHIL BONTRAGER  
President & Chief Executive Officer  
Representative for Sauder Manufacturing Co.

P R O C E E D I N G S

(2:00 p.m.)

JUDGE COCKS: Please be seated. Good afternoon. Welcome to the Board.

This is a consolidated oral argument for two proceedings, IPR2015-00774 and IPR2015-00958, both involving Patent 8,585,136.

Let's begin with introductions. Would counsel for Petitioner please introduce themselves?

MR. McKEOWN: Sure. Scott McKeown of Oblon, lead counsel for Petitioner, University Loft.

To my right here is --

MR. BAHRET: Bill Bahret, Bahret & Associates, also for Petitioner.

JUDGE COCKS: Thank you, counsel. And for the Patent Owner, please?

MR. YOUNG: For the Patent Owner, lead counsel is Thomas N. Young, and I'm accompanied by Michael Jacob and the Chief Executive Officer of the Patent Owner, Sauder Manufacturing Company, Mr. Philip Bontrager.

JUDGE COCKS: Thank you, Mr. Young. As we set forth in our trial hearing order, each side has 60 minutes of argument time. Petitioner will go first, as they bear the burden of unpatentability, and may reserve rebuttal time.

1           The Patent Owner will then argue their opposition  
2 to the case, and the Petitioner will use their rebuttal time after  
3 that.

4           That being said, I believe the Petitioner -- actually  
5 wait a minute. We received an e-mail from the Patent Owner.  
6 Has that been resolved?

7           MR. YOUNG: I believe it has.

8           JUDGE COCKS: So you withdraw those  
9 objections?

10          MR. YOUNG: Yes.

11          JUDGE COCKS: Thank you. Mr. McKeown, I  
12 think you were going to speak, and you may proceed.

13          MR. McKEOWN: Good afternoon. As the Board  
14 is aware, we're talking about the 774 and 958 proceedings  
15 today, both directed to the '136 patent. To the extent that I  
16 begin talking about one or the other proceeding, I will make  
17 sure that I make it clear so that the transcript is clear.

18          But generally speaking we're talking about claims  
19 1, 4, 6 through 9 and 12 of the 774. Any other claims will  
20 stand or fall with those if they have not been separately  
21 argued.

22          As to the 958 we're talking 1, claim 1, claim 6  
23 through 9 and 12. No other claims were separately argued.

24          The Patentee in this case well understands that its  
25 claims are simply too broad as written. For that reason, the

1 trial discussion has been about other things, whether it is  
2 commercial products, safety requirements, design goals, all of  
3 which is a story to infuse what is essentially 50-plus  
4 additional terms to these claims that are not recited in the  
5 claims. And the argument has been, well, the specification  
6 shows these features so, therefore, the claims require them.

7 That's not the way that the law works. Had  
8 Patentee wanted to remodel their claims as drastically as they  
9 are proposing here, they should have submitted an amendment.  
10 There is no way to remodel these claims in the manner that is  
11 proposed just because of the Patentee's say-so. So what am I  
12 talking about?

13 JUDGE COCKS: Counsel, if I could interrupt  
14 briefly?

15 MR. McKEOWN: Sure.

16 JUDGE COCKS: Did you reserve rebuttal time?

17 MR. McKEOWN: Yes, I will reserve a half hour.

18 MR. McKEOWN: So what am I talking about?

19 This is Exhibit 1022. It is not really coming up clear on the  
20 ELMO but it is in the record. Your Honors can pull it up if  
21 you would like.

22 But this was a clean copy of claim 1 originally that  
23 I gave to the Patentee's declarant, Mr. Harting during his  
24 deposition just to try to follow along with the various features  
25 and limitations that the Patentee was arguing that should be

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