

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FITBIT, INC.,  
Petitioner,

v.

ALIPHCOM, INC. D/B/A JAWBONE,  
Patent Owner.

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Case IPR2016-00714  
Patent 8,446,275 B2

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Before BRYAN F. MOORE, TREVOR M. JEFFERSON, and MIRIAM  
QUINN, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

ORDER

Request for Oral Argument

*37 C.F.R. § 42.70*

Patent Owner has requested an oral hearing<sup>1</sup> for *inter partes* review proceeding IPR2016-00714 pursuant to 37 C.F.R. § 42.70. Paper 20. Upon consideration by the panel, the Patent Owner's request is *granted*.

Each party will have one-half hour of total time to present arguments. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in this review are unpatentable. Petitioner will, therefore, begin by presenting its case regarding the challenged claims and grounds for which the Board instituted trial in the proceeding. Patent Owner will then respond to Petitioner's arguments. Petitioner may reserve time to respond to arguments presented by Patent Owner. There is no motion to amend pending in the subject proceeding.

There is a strong public policy interest in making all information presented in these proceedings public, as the review determines the patentability of claims in an issued patent and, thus, affects the rights of the public. This policy is reflected in part, for example, in 35 U.S.C. § 316(a)(1) and 35 U.S. C. § 326(a)(1), which provide that the file of any *inter partes* review or post grant review be made available to the public, except that any petition or document filed with the intent that it be sealed shall, if accompanied by a motion to seal, be treated as sealed pending the outcome of

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<sup>1</sup> Petitioner did not seek oral argument but indicated “[i]f, however, the Board grants Patent Owner's request for oral argument, Petitioner requests that it be allowed to participate in oral argument to the same extent as Patent Owner.” Paper 21. Patent Owner, via email to the Board, sought leave to file a sur-reply to Petitioner's Reply in lieu of an oral hearing. Petitioner objected via an email to the Board. We considered but did not grant Patent Owner's request for a sur-reply.

the ruling on the motion. Accordingly, we exercise our discretion to make the oral hearing publically available via in-person attendance.

Specifically, the hearing will commence at 10:00 AM Eastern Daylight Time, on June 13, 2017, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served *five* (5) business days before the hearing. The parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 118 (Oct. 23, 2013), regarding the appropriate content of demonstrative exhibits. The parties are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript. Any issue regarding demonstrative exhibits should be resolved at least *three* business days prior to the hearing by way of a joint telephone conference call to the Board. The parties are responsible for requesting such a conference sufficiently in advance of the hearing to accommodate this requirement. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The parties also shall provide the demonstrative exhibits to the Board at least *two* business days prior to the hearing by emailing them to [Trials@uspto.gov](mailto:Trials@uspto.gov). The parties shall email demonstrative exhibits to the Board but shall not file any demonstrative

exhibits in this case without prior authorization from the Board. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. Requests for audio-visual equipment are to be made five (5) days in advance of the hearing date. The request is to be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov). If the request is not received timely, the equipment may not be available on the day of the hearing.

The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location, and that if a demonstrative is not made fully available or visible to the judge participating in the hearing remotely, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at (571) 272-9797. The parties are also reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript and the ability of the judge participating in the hearing remotely to closely follow the presenter's arguments.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, lead or backup counsel may present the party's argument. If either party anticipates that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the Board no later than two business days prior to the oral hearing to discuss the matter.

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