

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMC CORPORATION,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

Case IPR2016-01106
Patent 6,516,442 B1

Before JUSTIN T. ARBES, BRIAN J. McNAMARA, and MINN CHUNG,
Administrative Patent Judges.

CHUNG, *Administrative Patent Judge.*

ORDER
Trial Hearing
37 C.F.R. § 42.70

The date set for oral hearing in this proceeding is September 7, 2017, if a hearing is requested by either party and granted by the Board. Paper 10. Both parties have requested oral hearing pursuant to 37 C.F.R. § 42.70. Papers 24, 27. The request is GRANTED. Each party will have 30 minutes of total argument time. EMC Corporation (“Petitioner”) bears the ultimate burden of proof that the claims at issue in this review are unpatentable. Therefore, at oral hearing Petitioner will proceed first to present its case with regard to the challenged claims and grounds on which we instituted trial. Intellectual Ventures II LLC (“Patent Owner”) then will argue its opposition to Petitioner’s case. Petitioner may reserve rebuttal time.

There is a strong public policy interest in making all information presented in this proceeding 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 the ruling on the motion. Accordingly, the Board exercises its discretion to make the oral hearing publically available via in-person attendance.

Specifically, the hearing will commence at 1:30 PM Eastern Time on September 7, 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. If the parties have any concern about disclosing confidential

information, they are to contact the Board by August 31, 2017 to discuss the matter.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. Any demonstrative exhibits must be served on or before September 1, 2017. Demonstrative exhibits are not evidence and may not introduce new evidence or arguments. Instead, demonstrative exhibits should cite to evidence in the record. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), and *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118), regarding the appropriate content of demonstrative exhibits.

The parties should attempt to resolve any objections to demonstratives prior to involving the Board. The parties must file any unresolved objections to the demonstratives with the Board by September 5, 2017. Any objection to the demonstrative exhibits that is not presented timely will be considered waived. The objections should identify with particularity which demonstratives are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. The Board will consider the objections and schedule a conference if necessary, or the Board may reserve ruling until after the oral argument.

Demonstratives should be filed at the Board by September 5, 2017. 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 5 days in advance of the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.**

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. 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 filed or otherwise made fully available or visible to the judge participating 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 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 three business days prior to the oral hearing to discuss the matter.

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Accordingly, it is

ORDERED that oral argument will commence at 1:30 PM ET, on Thursday, September 7, 2017, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

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