

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCLARENT, INC.,
Petitioner,

v.

FORD ALBRITTON, IV,
Patent Owner.

Case IPR2017-00498
Patent 9,011,412 B2

Before JOSIAH C. COCKS, BEVERLY M. BUNTING, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

An oral hearing was held in this proceeding on April 24, 2018. During the hearing, counsel for Ford Albritton, IV (“Patent Owner”) asserted that claim 1 of U.S. Patent No. 9,011,412 B2 (“the ’412 patent”) does not cover Figure 2 of the ’412 patent. Counsel for Acclarent, Inc. (“Petitioner”) asserted that Patent Owner never made the argument previously, and that claim 1 covers Figure 2.

Whether claim 1, or any other claim in the ’412 patent, encompasses the embodiment depicted in Figure 2, and as described in associated text in the specification, may be germane to one or more issues in this proceeding. Given the potential relevance of the issue, and the lack of adequate briefing on the subject, we request further input from the parties. More specifically, we seek input from the parties regarding whether any of the claims of the ’412 patent covers the structure depicted in Figure 2 and described in associated text. Timing and length requirements of the authorized briefing are set forth in the Order below. The parties are not authorized to file additional evidence in support of their respective briefs beyond that already of record in this proceeding.

It is

ORDERED that both Petitioner and Patent are authorized to submit a brief addressing whether any claims of the ’412 patent cover the structure depicted in Figure 2 and described in associated text, including the reasoning supporting the position; and

FURTHER ORDERED that the briefs shall not exceed three (3) pages in length and shall be filed no later than May 2, 2018.

IPR2017-00498
Patent 9,011,412 B2

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