

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SK HYNIX INC., SK HYNIX AMERICA INC., and SK HYNIX
MEMORY SOLUTIONS INC.,
Petitioner,

v.

NETLIST, INC.,
Patent Owner.

Case IPR2017-00577
Patent 8,516,185 B2

Before BRYAN F. MOORE, MATTHEW R. CLEMENTS, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

ORDER
Request for Oral Argument
37 C.F.R. § 42.70

The parties have each requested an oral hearing for the above *inter partes* review proceeding pursuant to 37 C.F.R. § 42.70. Papers 18, 19.

Upon consideration by the panel, the parties' requests are *granted*.

Each party will have thirty minutes of total time to present arguments.
Petitioner bears the ultimate burden of proof that Patent Owner's claims at

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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 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 immediately following the hearing in IPR2017-00561 and IPR2017-00562 (which begin at 1:00 PM Eastern Time), on April 6th, 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 *seven* (7) business days before the hearing. The parties may refer to *St. Jude Medical*,

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Cardiology Division, Inc. v. The Board of Regents of the University of Michigan, IPR2013-00041, slip op. 2–5 (PTAB Jan. 27, 2014) (Paper 65), 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. 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. 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.

The parties shall confer and attempt to resolve any objections to demonstratives prior to involving the Board. For any issue regarding the proposed demonstrative exhibits that cannot be resolved after conferring with the opposing party, the parties may file jointly a one-page list of objections at least *two* business days prior to the date of the hearing. Any such list should identify with particularity which demonstrative exhibit(s) is (are) subject to objection and include a short statement (no more than one concise sentence) of the reason for each objection. No argument or further explanation is permitted.

We will consider the objections and schedule a conference call, if necessary, to discuss them. Otherwise, we may strike demonstrative exhibits that we find objectionable or reserve ruling on the objections until the hearing or after the hearing. Any objection to a demonstrative exhibit that is not presented in a timely-filed list will be considered waived. Regardless of

any objections raised by the parties, the Board may expunge any demonstrative exhibits that it finds excessive in number or content.

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. 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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