

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SK HYNIX, INC.,
Petitioner,

v.

NETLIST, INC,
Patent Owner.

Cases IPR2017-00667 and IPR2017-00668
Patent 7,532,537

Record of Oral Hearing
Held: April 24, 2018

Before STEPHEN C. SIU, MATTHEW R. CLEMENTS, and SHEILA F.
McSHANE, *Administrative Patent Judges*.

Cases IPR2017-00667 and IPR2017-00668
Patent 7,532,537

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Tuesday, April 24, 2018, at 1 p.m., at the U.S. Patent and Trademark Office, Madison Building East, 600 Dulany Street, Alexandria, Virginia.

1 PROCEEDINGS

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3 JUDGE MCSHANE: Thank you. Please be seated, and we should
4 have Judges Clements and Siu joining us in a moment. Judge Clements?
5 Judge Siu?

6 JUDGE CLEMENTS: I'm here.

7 JUDGE MCSHANE: Judge Siu, can you hear us?

8 JUDGE SIU: Yes, I'm here.

9 JUDGE MCSHANE: Thank you. Good afternoon. We are here
10 today, we actually have two afternoon sessions today. The first session
11 which we'll be hearing now are the oral hearings for IPR2017-00667 and
12 00668. This is the SK Hynix, a variety of different companies for Hynix,
13 and then the Netlist. The first session will be approximately two hours and it
14 will run until about 3 p.m. Then we're going to have a second session for
15 IPR2017-00692 and it will be starting at about 3:10.

16 I see we have counsel for all three cases in the room at the moment --
17 I recognize you -- for Patent Owner, and I see we have the same Petitioner
18 counsel for both sets of hearings this afternoon. Before we get started, we'd
19 like to note the two cases came down from the Supreme Court this morning
20 and one is the SAS case which changes how the Board has sometimes been
21 addressing grounds that are brought by the petition to it. Let me know . . .
22 we've had a short time to look at these cases so that includes everybody as
23 we sit here today, so we are just going to address the issues that we have
24 briefed in front of us for the hearing today. If the parties have something
25 that they would like to bring to us in the near term and ask us for a call to

1 consider things that are related to SAS we will certainly consider a call at
2 some future near term point. Okay? Everybody understand that? Would
3 anybody like to comment on that, and I'll open it up to anybody at all, any of
4 the counsel? Any comments on SAS?

5 MR. MICALLEF: No comment from Petitioner, Your Honor, except
6 perhaps congratulations on maintaining gainful employment.

7 JUDGE MCSHANE: Well, I won't comment on that but it's
8 employment for probably many people in this room besides the judges for
9 instance. But anyway here we are. We're at least all constitutional, we're all
10 set on that. So let me turn back to the cases that we're going to hear in this
11 first session, and can we have the parties' appearances for these cases, 667
12 and 668 cases.

13 MR. MICALLEF: Yes, Your Honor. I believe it's 677 and 678, but --

14 JUDGE MCSHANE: Oh, sorry.

15 MR. MICALLEF: That's okay. Joe Micallef for Petitioners and with
16 me is my partner, Kelley Conaty, who's going to make the argument in these
17 proceedings. A number of my colleagues are in the room too. My partner
18 Brian Nester, my colleagues Wonjoo Suh and Sam Dillon, and from SK
19 Hynix my clients, Mr. E. B. Rowe (phonetic), Mr. Sonjun Won (phonetic)
20 are also in the room. Thank you.

21 JUDGE MCSHANE: Thank you. And for Patent Owner, please.

22 MR. ARJOMAND: Good afternoon, Your Honors. My name is
23 Mehran Arjomand of Morrison Foerster for Patent Owner Netlist. I would
24 just note that the IPR numbers are 2017-00667 and 00668.

1 JUDGE MCSHANE: Okay. Thank you for the clarification. All
2 right. And Petitioner, the way we're going to run this, Petitioner it's their
3 case in chief so they are going to present their arguments. They can reserve
4 some rebuttal time. We'll hear from Patent Owner in their response and then
5 we'll hear, again, if any rebuttal time has been reserved. The parties have
6 been given an hour each to address both the 667 case and 668 case. Thank
7 you. If the parties have any discussions that are specific to either of the
8 cases, please try to identify those as you go through it. I understand there's a
9 lot of overlap in issues but to the extent there are differences any notations in
10 the record will be helpful on that. If you're using demonstratives today, we
11 have Judges Clements and Siu who are attending remotely, if you could refer
12 to the demonstrative numbers it would be very helpful for them and also be
13 helpful for the record and for the judges if you could stick to speaking in the
14 microphone at the podium. Thank you, and if Petitioner is ready could you
15 please proceed.

16 MS. CONATY: Thank you, Your Honor. Kelley Conaty for the
17 Petitioners. I would like to reserve 30 minutes time for rebuttal.

18 JUDGE MCSHANE: Okay. What I'm going to do here is I'm going
19 to give you the full 60 minutes and then we'll see how much is left that you
20 have in your case in chief and we'll work from there. Okay. Thank you.

21 MS. CONATY: As we've all noted, this proceeding is on two
22 petitions related to the 537 patent and that is the 667 and 668 proceedings,
23 and in the 667 proceeding the Board instituted trial on all three grounds. We
24 see this on slide 2. One on anticipation by Amidi, one on obviousness in
25 view of Amidi, and a third on the combination of Amidi and Klein.

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