

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 IPR2017-00667 (Patent 7,532,537 B2)
Case IPR2017-00668 (Patent 7,532,537 B2)
Case IPR2017-00692 (Patent 8,874,831 B2)¹

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

CLEMENTS, *Administrative Patent Judge*.

Trial Hearing Order
35 U.S.C. 316(a)(10) and 37 C.F.R. § 42.70

¹ This Scheduling Order sets due dates that are identical in all three cases. We, therefore, exercise our discretion to issue one Scheduling Order to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

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Both parties requested a hearing pursuant to 37 C.F.R. § 42.70(a).
Paper 23; Paper 25.² The requests are *granted*.

Patent Owner suggests we group Cases IPR2017-00667 and IPR2017-00668 together and, separately, hear Case IPR2017-00692. Paper 25, 2. We have reviewed the issues that the parties intend to address for each proceeding and agree that grouping the cases as requested for purposes of the hearing is warranted due to the overlapping issues.

Petitioner requests thirty (30) minutes per side for each of IPR2017-00667 and IPR2017-00668, and Patent Owner requests sixty (60) minutes per side for the combination of IPR2017-00667 and IPR2017-00668. *Id.* We determine that sixty (60) minutes per side is warranted for the first group. For IPR2017-00692, Petitioner requests thirty (30) minutes per side and Patent Owner requests forty-five (45) minutes per side. IPR2017-00692, Papers 18, 19. Accordingly, the hearing will be held in two sessions:

1. The first session will cover the oral hearing for IPR2017-00667 and IPR2017-00668, and shall **commence at 1:00 PM Eastern Time on Tuesday, April 24, 2018, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.** Each party will have sixty (60) minutes to present its arguments with regard to this group of cases.
2. The second session will cover the oral hearing for IPR2017-00692, and shall **commence at 3:10 PM Eastern Time on Tuesday, April 24, 2018, on the ninth floor of Madison Building East, 600**

² Citations are to IPR2017-00667, unless otherwise noted. Substantively similar requests were filed in each of the above-named proceedings.

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Dulany Street, Alexandria, Virginia. Each party will have thirty (30) minutes to present its arguments with regard to this case.

Given that Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in this review are unpatentable, each session will begin with Petitioner presenting its case regarding the challenged claims for the group of cases. Patent Owner then will have the entirety of its allotted time to respond to Petitioner's presentation. Petitioner may reserve rebuttal time to respond to Patent Owner's arguments only. There is no motion to amend pending in any of these proceedings.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. Given that the hearing will be held in two sessions, each session will have its own transcript, the entirety of which will be applicable to and filed in each proceeding in that group of cases.

The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven (7) business days before the hearing. 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), regarding the appropriate content of demonstrative exhibits. We expect that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved the parties may file any objections to demonstratives with the Board at least two business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to

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objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. We will consider any objections and schedule a conference call if deemed necessary. Otherwise, we will reserve ruling on the objections. Any objection to demonstrative exhibits that is not presented timely 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. Despite the requirement in § 42.70(b) for parties to file demonstratives, the parties **shall not file** any demonstrative exhibits in this case without prior authorization from the panel. A hard copy of the demonstratives should be provided to the court reporter at 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.

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We expect lead counsel for each party to be present at hearing, although any backup counsel may make the actual presentation, in whole or in part. If any lead counsel will not be in attendance at hearing, we should be notified via a joint telephone conference call no later than two (2) business days prior to the hearing to discuss the matter.

Questions regarding specific audio-visual equipment should be directed to the Administrative Staff at (571) 272-9797. Requests for audio-visual equipment are to be made at least five (5) days in advance of the hearing date by sending the request to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

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