

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INFOBIONIC, INC.,
Petitioner,

v.

BRAEMAR MANUFACTURING, LLC,
Patent Owner.

Case IPR2017-00796
Patent RE43767 E

Record of Oral Hearing
Held: May 1, 2018

Before PHILLIP J. KAUFFMAN, KEVIN W. CHERRY,
MICHAEL L. WOODS, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing on Tuesday, May 1, 2018, commencing at 2:00 p.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 P-R-O-C-E-E-D-I-N-G-S

2 1:58 p.m.

3 JUDGE CHERRY: Good afternoon. I'm Judge Cherry.
4 Remotely will be Judges Woods and Kauffman. Will the parties please
5 make their appearances?

6 MR. STRANG: For Petitioner, Your Honor, Jonathan Strang,
7 representing InfoBionic. With me, I have Joseph Grochowski.

8 JUDGE CHERRY: Welcome.

9 MR. BROUGHAN: For Patent Owner, Tom Broughan, from
10 Sidley Austin. With me is lead counsel, Ching-Lee Fukuda.

11 MS. FUKUDA: Good afternoon, Your Honors.

12 JUDGE WOODS: Thank you. Good afternoon, and welcome
13 to the Board. You're here for oral argument in connection with
14 IPR2017-00796, which involves U.S. Patent No. RE43,767. I am Judge
15 Woods. I am joined on the Panel by Judges Cherry and Kauffman. As
16 you can see, Judge Kauffman and I are participating remotely, so we
17 appreciate if you could refer to demonstratives by page numbers and the
18 record by page numbers.

19 We have copies of those documents in front of us. Before we
20 begin our hearing, as we explained in an email communication last
21 Thursday, the Supreme Court's recent decision in SAS affects this
22 proceeding. Although we instituted review of all claims, we declined

1 to institute review of grounds 4 and 5 in the petition, as explained in
2 our decision to institute. At that time, we were not persuaded that the
3 petition demonstrated a reasonable likelihood of prevailing with
4 respect to those two grounds. In light of SAS, we intend to issue an
5 order to supplement our original decision to institute to include
6 grounds 4 and 5. Patent Owner, if we supplement our institution
7 decision to include those two grounds, do you intend to supplement
8 your Patent Owner response and conduct additional discovery to
9 address those additional grounds?

10 MR. BROUGHAN: Yes, Your Honor, we would like to have
11 an opportunity to supplement our response to address the new
12 grounds.

13 JUDGE WOODS: Okay, thank you. Petitioner, assuming
14 Patent Owner files a supplementary response, we would anticipate
15 that you would also intend to file a supplemental reply to address
16 whatever might be in that response and possibly submit additional
17 discovery. Is this your expectation or understanding?

18 MR. STRANG: Your Honor, if they do, we would like to
19 have that option, but we're content to rest on the petition. We
20 recognize that the Board has already found that we didn't meet our
21 burden in the first instance, with the Walker grounds, and that the

1 Board can essentially adopt the same reasoning in the final written
2 decision. We see no reason for further briefing, Your Honor.

3 JUDGE WOODS: Okay, thank you. Patent Owner, would
4 you be interested in conducting a supplemental hearing and/or
5 extending this proceeding by up to six additional months, in the
6 event -- due to the supplemental decision to institute?

7 MR. BROUGHAN: Sorry; one moment, Your Honor.

8 JUDGE WOODS: Thank you.

9 MR. BROUGHAN: If we were to go forward on the
10 grounds, we would want the hearing. But, Your Honor, I think what
11 I just heard was that Petitioner would be willing to have the Board
12 adopt the same rationale that it advanced in its institution decision to
13 deny the grounds. If Petitioner consents to that, then we don't think
14 we would need to conduct additional briefing or discovery, since the
15 issue would essentially be moot.

16 JUDGE WOODS: Okay, thank you. Just curious.
17 Yesterday, there was, I believe, a webcast involving the chief judge,
18 where he addressed SAS. Patent Petitioner, were you able to
19 participate in that?

20 MR. STRANG: Your Honor, I observed the webcast on my
21 computer, at my desk, but as far as interactive participation, no, Your
22 Honor.

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