

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INSTRUMENTATION LABORATORY COMPANY,
Petitioner,

v.

HEMOSONICS LLC,
Patent Owner.

Case IPR2017-00852 (Patent 9,272,280 B2)
Case IPR2017-00855 (Patent 9,410,971 B2)¹

Before JO-ANNE M. KOKOSKI, KRISTINA M. KALAN, and
JEFFREY W. ABRAHAM, *Administrative Patent Judges*.

ABRAHAM, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

¹ This Order addresses issues common to both cases; therefore, we issue a single Order to be entered in each case. The parties are not authorized to use this style heading.

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IPR2017-00855 (Patent 9,410,971 B2)

Petitioner and Patent Owner each request an oral hearing pursuant to 37 C.F.R. § 42.70. IPR2017-00852, Papers 24, 25; IPR2017-00855, Papers 26, 27.

On June 1, 2018, a conference call was held between counsel for both parties and Judges Kokoski, Kalan, and Abraham. During the call, the parties agreed to have a consolidated hearing for both cases, and that the oral hearing will concern only whether Petitioner has satisfied its burden of showing that claims 1 and 2 of U.S. Patent No. 9,272,280 B2 (the subject of IPR2017-00852) and claims 1, 2, 6, 7, 15, and 16 of U.S. Patent No. 9,410,971 B2 (the subject of IPR2017-00855)² are unpatentable as anticipated by Baugh.³

Having considered the parties' submissions, the parties' requests for oral argument are GRANTED.

Each party will have **30 minutes** of total argument time for the consolidated hearing. Petitioner bears the ultimate burden of proof that the patent claims at issue in this review are unpatentable. Therefore, Petitioner will proceed first to present its case with regard to whether Baugh anticipates the challenged claims. Thereafter, Patent Owner will respond to Petitioner's arguments. Petitioner may reserve rebuttal time to respond to

² Pursuant to the parties' agreement during the conference call, this oral hearing will not concern the claims and grounds addressed in our orders dated April 26, 2018, modifying our institution decisions to institute on all of the challenged claims and all of the grounds presented in the Petitions. IPR2017-00852, Paper 26; IPR2017-00855, Paper 28. If necessary, the parties may address those claims and grounds in a supplemental oral hearing, presently scheduled for August 14, 2018.

³ Baugh et al., U.S. Patent No. 6,221,672 B1, issued Apr. 24, 2001 ("Baugh," Ex. 1005).

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arguments presented by Patent Owner, but Petitioner may not reserve more than half of its allotted time for rebuttal. Patent Owner may not reserve time for rebuttal.

The hearing shall commence at 1:00 pm (EDT) on June 12, 2018. The hearing will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, VA. Seating will be available on a first-come, first-served basis. The Board will provide a court reporter, and the transcript shall constitute the official record of the hearing.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits, if any, must be served four business days before the hearing. 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 not file any demonstrative exhibits in this proceeding without prior authorization from the Board.

The Board reminds the parties that demonstrative exhibits are not evidence, but are intended to assist the parties in presenting their oral arguments to the Board. The Board also reminds the parties that demonstrative exhibits are not a mechanism for making arguments not previously addressed in the papers. 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), for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits. If such objections cannot be resolved, the parties may file any remaining objections with the

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Board at least two business days before the oral hearing. The objections should identify with particularity the portions of the demonstrative exhibits that are subject to objection and include a one-sentence statement of the basis for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections until the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

At least one member of the panel will be attending the hearing electronically from a remote location and may not be able to view the projection screen in the hearing room. In particular, documents presented on the Elmo projector are not visible to remote judges, so please plan accordingly. Each 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 for the benefit of the judge(s) presiding over the hearing remotely. Because of limitations of the audio transmission systems in our hearing rooms, the presenter may speak only when standing at the hearing room lectern.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, any counsel of record 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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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 no later than 5 days in advance of the hearing date. The request is to be sent directly to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

In light of the foregoing, it is:

ORDERED that the oral hearing, conducted pursuant to the procedures outlined above, shall commence at 1:00 PM (EDT) on June 12, 2018.

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