

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 9,727,280 B2)

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

Record of Oral Hearing
Held: August 14, 2018

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

Case IPR2017-00852 (Patent 9,727,280 B2)
Case IPR2017-00855 (Patent 9,410,971 B2)¹

APPEARANCES:

ON BEHALF OF THE PETITIONER:
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ON BEHALF OF PATENT OWNER:
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The above-entitled matter came on for hearing on Tuesday, August 14, 2018, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE ABRAHAM: Good afternoon. We are here for the supplemental hearing in cases IPR2017-00852 regarding U.S. patent number 9,272,280 and IPR2017-00855 regarding U.S. patent number 9,410,971. I am Judge Abraham. Joining with me in the hearing room is Judge Kokoski. And Judge Kalan should be joining us.

Judge Kalan, are you there? We are having technical difficulties. There we go. Can you hear us now, Judge Kalan? They are still having trouble hearing us.

(Pause in the proceedings.)

JUDGE ABRAHAM: Thanks for your patience. As you can tell, it's going to be very important with Judge Kalan joining us from the Denver office to make sure you are in front of a microphone when you are speaking so that she can hear us. There's microphones at the desk and also at the podium.

Also, if you have slides today, she can't see the screen, but she has a copy of the slide decks that you provided to us. So while you're doing your arguments, make sure you refer to the slide numbers so that she can follow along.

Let's begin by having appearances from counsel, starting with Petitioner.

1 MR. CHOW: Stephen Chow from Hsuanyeh Law Group for
2 Petitioner. With me are Gabriel Goldman and Ronda Moore of Burns &
3 Levinson.

4 JUDGE ABRAHAM: Welcome. Patent owner?

5 MR. NOLAN: Good afternoon, Your Honor. Brian Nolan on
6 behalf of Patent Owner, Hemosonics, from the firm of Mayer Brown in New
7 York, with my colleague, Ying-Zi Yang, also from Mayer Brown, our New
8 York office.

9 JUDGE ABRAHAM: Good afternoon. Before we get started with
10 the arguments, I wanted to address the objections to the slides. We received
11 the objections from both parties. For the most part, I'm going to overrule the
12 objections with a few exceptions which I'll talk about. Patent Owner, you
13 objected to slide 14 of Petitioner's deck because it wasn't in the original set
14 of slides that they sent you. But I didn't gather that there was any objection
15 to the substance of the slide; is that accurate?

16 MR. NOLAN: Well, Your Honor, we didn't really look at the
17 substance for objections because it was more that they were able to respond
18 to our slide deck to put this in. But I think that the arguments are going to
19 speak for themselves. So if it's easier for the Board for us to withdraw that
20 objection, I have no problem.

21 JUDGE ABRAHAM: I was going to overrule it anyway because
22 the substance seemed acceptable. Either way, I'm going to allow the
23 arguments to be made based on the slide.

24 MR. NOLAN: Thank you, Your Honor.

1 JUDGE ABRAHAM: Just to reiterate, the demonstratives are not
2 coming in as evidence. They are just here to guide your argument. So that's
3 part of the reason why I'm overruling them -- overruling the objections. I
4 think the objection that you made to the slides 12 and 21 sort of contingent
5 on their objecting to your slide, I think it was, 15, I'm going to allow you to
6 use slide 15. So that moots your objections to slides 12 and 21.

7 MR. NOLAN: You are correct, Your Honor. If slide 15 is
8 considered allowable, then it would alleviate any rationale for our objection
9 with respect to those slides.

10 JUDGE ABRAHAM: I'm going to allow them to use slide 15
11 because from what I can tell, they are citing to case law, and I'm not going to
12 limit the cases that they can refer to because they haven't referred to them
13 before. They have made those arguments before us in conversations we've
14 had on the phone, so I'm going to allow them to refer to that case law. I
15 don't want to limit them to what specific cases they can and can't cite. That's
16 my rationale for that.

17 Petitioner, you've raised several arguments or several objections
18 that there's new arguments in the slides from Patent Owner. And there were
19 lots of little bits and pieces here and there that you have raised. So what I'm
20 going to do is, because it's going to be hard to say you can't use a certain
21 bullet point, what I'm going to say is for Patent Owner I'm going to caution
22 you that if you are making arguments that have not been raised before in a
23 brief or in some other time on the record, you need to be careful about that.
24 We offered you a chance to file a supplemental Patent Owner response,

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