

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELPHI TECHNOLOGIES, INC.,
Petitioner,

v.

MICROCHIP TECHNOLOGY, INC.,
Patent Owner.

Case IPR2017-00861 (Patent 7,627,708 B2)
Case IPR2017-00864 (Patent 7,523,243 B2)¹

Record of Oral Hearing
Held: June 14, 2018

Before BRIAN J. McNAMARA, DANIEL N. FISHMAN, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

Case IPR2017-00861 (Patent 7,627,708 B2)

Case IPR2017-00864 (Patent 7,523,243 B2)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Thursday, June 14, 2018, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

1

2 MR. DILL: All rise.

3 JUDGE McNAMARA: Please be seated. Okay. Good afternoon,
4 everyone. This is the oral hearing in -- it's a consolidated oral hearing for
5 cases IPR2017-00861 and 00864.

6 And we have, Counsel for Petitioner, introduce yourself first.

7 MR. McKEOWN: Scott McKeown of Ropes & Gray for Petitioner.
8 I'm joined today by Brandan McLaughlin who is a Summer Associate
9 controlling the technology.

10 JUDGE McNAMARA: All right. Thank you very much. Patent
11 Owner?

12 MR. BANNER: Thank you, Your Honor. Brian Banner with Slayden
13 Grubert Beard, on behalf of the Patent Owner Microchip Technology
14 Incorporated; and with me today is Bruce Slayden, who is the lead Counsel
15 in the case.

16 JUDGE McNAMARA: Thank you very much. As you can tell, I am
17 Judge McNamara. And Judges Fishman and Clements are participating
18 remotely. So, to the extent that you can, make sure that you identify any
19 demonstrative or other document that you might be referring to during your
20 arguments so that they can access that remotely.

21 Let me see. Each party in this case will have 60 minutes for
22 argument, and so the Petitioner will go first. Present its case on the
23 challenged claims, and then he can preserve some -- Petitioner may reserve
24 time for rebuttal. Patent Owner will then proceed to present its argument.
25 And lastly, the Petitioner can make use of any time that's reserved to rebut
26 the Patent Owner's opposition.

1 Oh. I forgot to mention. Also, we have with us, attending in Denver,
2 a detailee Examiner by the name of Ryan Coyer, and so he will be present at
3 the hearing as well.

4 Before we begin I also want to talk about the Patent Owner's request
5 for a rehearing of the Panel's post-SAS decision to institute on all claims of
6 all grounds. Just so you know, the Panel will request additional briefing on
7 this issue, and we'll enter an order shortly as to what kind of briefing, and
8 how extensive that briefing will be.

9 To the extent that either party wants to comment on the matter today,
10 they are welcome to do so, it will be treated as part of your arguments, so it
11 will count against whatever time limitations are in the 60 minutes.

12 Are there any questions? And is every one ready to proceed? All
13 right; then let's begin with the Petitioner.

14 MR. McKEOWN: Good morning. And may it please the Board. I
15 would like to --

16 JUDGE McNAMARA: Oh. How much -- did you want to reserve
17 for rebuttal?

18 MR. McKEOWN: I reserve 30 minutes for rebuttal.

19 JUDGE McNAMARA: Thirty minutes, so I will let you know then
20 when 30 minutes is up. Okay.

21 MR. McKEOWN: Good morning. May it please the Board. Scott
22 McKeown of Ropes & Gray, for Petitioner; as I said, I'm joined today by
23 Brandan McLaughlin, a Summer Associate.

24 So, we've reserved time for rebuttal. I did want to briefly comment on
25 the re-hearing issue, as I believe I can greatly simplify that. Petitioner
26 expressly withdraws grounds 4 through 6, so that will leave, at least

1 according to the demonstratives of the Patent Owner here today, they believe
2 that this issue still impacts ground 3. I don't believe that's the case. Ground
3 3 has been instituted, so in our view that rehearing request has been mooted,
4 but we'll look to the Board's order for any clarification in that regard.

5 Next, we have one other housekeeping issue. As the Panel may recall,
6 we had a call last Thursday I believe it was, on that call Patent Owner
7 represented that they were recording the call and transcribing it, and
8 committed to upload a transcript of that call. That transcript was not
9 uploaded with the objections filed last Friday.

10 I contacted the Patent Owner and indicated that I was hoping to see
11 that uploaded by Monday, or we would need to contact the Board. At that
12 point Patent Owner indicated that they were unable to record the call, they
13 had technical difficulties. They were unable to record any of it.

14 So, that was the first I've heard of that on Monday. As a compromise,
15 they proposed a generic stipulation which their proposed language was little
16 more than the description of why they requested the call, and that the Board
17 denied their request. Petitioner did not agree with that, because obviously it
18 left out the basis for the Board's decision.

19 I think from the Board's perspective, the ship has sailed on this
20 dispute, but what I would like to request is authorization to upload the email
21 correspondence that was discussed on that call.

22 From the Petitioner's perspective, the additional briefing was denied
23 for two reasons, one of which was the Patent Owner waived the opportunity
24 to submit evidence that was provided by the Board on its May 10th order.

25 And then secondarily, when the Petitioner submitted declaration
26 evidence, and offered the deposition of that declarant to the Patent Owner,

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