

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

1964 EARS, LLC,
Petitioner,

v.

JERRY HARVEY AUDIO HOLDING, LLC,
Patent Owner.

Case IPR2017-01084 (Patent 8,567,555 B2)
Case IPR2017-01091 (Patent 8,925,674 B2)
Case IPR2017-01092 (Patent 9,197,960 B2)

Before BRIAN J. McNAMARA, JOHN F. HORVATH, and
AARON W. MOORE *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

ORDER
Granting Request for Oral Argument
37 C.F.R. § 42.70

IPR2017-01084 (Patent 8,567,555 B2)
IPR2017-01091 (Patent 8,925,674 B2)
IPR2017-01092 (Patent 9,197,960 B2)

On October 31, 2018, Petitioner and Patent Owner filed separate requests for oral argument in each of these proceedings. Papers 54, 55.¹ The parties' requests in each proceeding are *granted*. Oral arguments will be held on December 17, 2018, commencing at 1:00 p.m. Eastern Time, in Hearing Room B on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia 22314. The hearings will be open to the public for in-person attendance, accommodated on a first come first served basis. The Board will provide a court reporter for the hearings, and the reporter's transcript will constitute the official record of the hearings. One member of the panel will be electronically attending the hearings from a remote location.

Two hearings will be conducted in the following order with a brief break between hearings: IPR2017-01084 followed by a consolidated hearing for IPR2017-01091 and IPR2017-01092. For the hearing in IPR2017-01084, each party will have thirty five (35) minutes of *total* argument time. For the consolidated hearing in IPR2017-01091 and IPR2017-01092, each party will have seventy (70) minutes of *total* argument time. Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. Therefore, for each hearing, Petitioner will proceed first with an opening argument, and may reserve time for rebuttal. Thereafter, Patent Owner may respond with a rebuttal argument, and may also reserve time for sur-rebuttal.

¹ Unless otherwise noted, we cite to the papers filed in IPR2017-01084. Substantially similar papers were filed in IPR2017-01091 and IPR2017-01092.

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Currently pending, in each proceeding, is Patent Owner's contingent motion to amend. *See, e.g.*, Paper 21. For each hearing, Petitioner may address the patentability of the amended claims during its opening argument and Patent Owner may do the same during its rebuttal argument. In addition, Petitioner and Patent Owner may each respond to the arguments made by the other party in the times reserved for rebuttal and sur-rebuttal, respectively.

Also currently pending, in each proceeding, are various motions to exclude. Each party bears the burden on its own motion to exclude. Therefore, for each hearing, Petitioner may address the merits of its motion during its opening argument, Patent Owner may oppose during its rebuttal argument, and Petitioner may reply during the time reserved for rebuttal. Similarly, Patent Owner may address the merits of its motion to exclude during its rebuttal argument, Petitioner may oppose during the time reserved for rebuttal, and Patent Owner may reply during the time reserved for sur-rebuttal.

Under 37 C.F.R. § 42.70(b), any demonstrative exhibits to be presented at the hearings must be served seven business days before the hearings. They shall be filed with the Board no later than **three business days** before the hearings. Any objection to demonstrative exhibits should be resolved at least two business days prior to the hearings by way of a joint telephone conference call to the Board. Any objection to demonstrative exhibits that is not timely presented will be waived. For guidance on appropriate content in demonstrative exhibits, the parties are directed to *CBS*

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Interactive Inc. v. Helferich Patent Licensing, LLC, IPR2013-00033, Paper 118 (Oct. 23, 2013).

At the hearings, please provide a hard copy of the demonstrative exhibits to the court reporter. Also, when referencing a demonstrative exhibit, please clearly and specifically identify the referenced exhibit to ensure the clarity and accuracy of the reporter's transcript, and to assist remote panel members.

Please direct any questions regarding specific audio-visual equipment needed to facilitate the presentation of demonstrative exhibits to the Board at (571) 272-9797. Please make any requests for specific audio-visual equipment, including overhead projectors and screens, five business days in advance of the hearing directly to Trials@uspto.gov. The requested equipment may not be available on the day of the hearing if the request is not made five business days in advance.

The Board expects lead counsel for each party to be present in person at the oral hearings. However, lead or backup counsel may put forward a party's arguments. If either party anticipates that its lead counsel will not be attending the oral hearings, the parties should initiate a joint telephone conference with the Board no later than two business days prior to the oral hearings to discuss the matter.

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