

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MLB ADVANCED MEDIA, L.P.,
Petitioner,

v.

FRONT ROW TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2017-01127
Patent 8,583,027 B2

Before JUSTIN T. ARBES, MATTHEW R. CLEMENTS, and
TERRENCE W. McMILLIN, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

Conference Call

A conference call in the above proceeding was held on May 10, 2018, among respective counsel for Petitioner and Patent Owner, and Judges Arbes, Clements, and McMillin. The call was held to discuss the related litigation between the parties involving U.S. Patent No. 8,583,027 B2 (Ex. 1001, “the ’027 patent”) and whether oral argument would be held in this proceeding. The parties agreed that the district court found the challenged claims in this proceeding (claims 1, 3, 4, 7, 9, and 10 of the ’027 patent) invalid under 35 U.S.C. § 101, the U.S. Court of Appeals for the Federal Circuit affirmed the district court’s decision, and the Supreme Court of the United States recently denied Patent Owner’s petition for a writ of certiorari. *See Front Row Techs. LLC v. MLB Advanced Media, L.P.*, 697 F. App’x 701 (Fed. Cir. 2017), 2018 WL 1142971 (U.S. Apr. 23, 2018). Patent Owner also confirmed that its Motion to Amend (Paper 25) is non-contingent, i.e., Patent Owner seeks to cancel claims 1, 3, 4, 7, 9, and 10 (regardless of any decision in this proceeding as to the patentability of those claims) and substitute claims 19–24 in their place. The parties agreed that this proceeding should proceed to a final decision under 35 U.S.C. § 318(a).

With respect to oral argument, Petitioner requested oral argument under 37 C.F.R. § 42.70(a) to address only issues pertaining to Patent Owner’s Motion to Amend. Paper 34. Patent Owner stated in its request that it did not believe oral argument was necessary, but that Patent Owner would participate if a hearing is held, and similarly indicated an intent to only address issues pertaining to the Motion to Amend. Paper 35. The parties agreed during the call that a hearing would be useful due to the number of issues involved with respect to the Motion to Amend.

Oral Argument

The parties' requests for oral argument are *granted*.

Each party will have forty-five (45) minutes of total time to present arguments. Patent Owner will proceed first to present its case with regard to whether its Motion to Amend meets the requirements set forth in 37 C.F.R. § 42.121. Patent Owner may reserve rebuttal time to respond to arguments presented by Petitioner. Thereafter, Petitioner may respond to Patent Owner's arguments regarding the requirements for a motion to amend under 37 C.F.R. § 42.121, and present its arguments regarding the patentability of proposed substitute claims 19–24. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner regarding the patentability of claims 19–24. Patent Owner then may present any rebuttal arguments regarding the requirements for a motion to amend under 37 C.F.R. § 42.121 and may respond to Petitioner's arguments regarding the patentability of claims 19–24. Finally, Petitioner may present any rebuttal arguments solely regarding the patentability of claims 19–24.

The hearing will commence at 1:00 PM Eastern Time on May 21, 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, Virginia. In-person attendance will be accommodated on a first come, first served basis. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Notwithstanding 37 C.F.R. § 42.70(b), the parties may agree on a date for service of demonstrative exhibits. The parties shall confer with each other regarding any objections to demonstrative exhibits and file demonstrative exhibits with the Board at least two business days prior to the

hearing. For any issue that cannot be resolved after conferring with the opposing party, the parties may file jointly a one-page list of objections at least two business days prior to the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one sentence) of the reason for each objection. No argument or further explanation is permitted. We will consider the objections and schedule a conference call if necessary. Otherwise, we will reserve ruling on the objections until the hearing or after the hearing. Any objection to demonstrative exhibits that is not presented timely will be considered waived. Each party also shall provide a hard copy of its demonstrative exhibits to the court reporter at the hearing.

The parties are directed to *St. Jude Med., Cardiology Div., Inc. v. Board of Regents of the Univ. of Mich.*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), regarding the appropriate content of demonstrative exhibits. The parties are reminded that the 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. The parties also should note that two members of the panel will be attending the hearing electronically from a remote location and that if a demonstrative exhibit is not filed or otherwise made fully available or visible to the judges presiding over the hearing remotely, that demonstrative exhibit will not be considered. The judges presiding remotely will not be able to view the screen in the hearing room.

The Board expects lead counsel for Petitioner and Patent Owner to be present at the hearing, although any back-up counsel may make the actual presentation, in whole or in part. If lead counsel for any party will not be in

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attendance at the hearing, the Board should be notified via a joint conference call no later than two days prior to the hearing to discuss the matter.

Requests for audio-visual equipment at the hearing are to be made five days in advance of the hearing date. The requests must be sent to *Trials@uspto.gov*. If the requests are not received timely, equipment may not be available on the day of the hearing. Further, if the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at 571-272-9797.

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