

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ELECTION SYSTEMS & SOFTWARE, LLC,

Petitioner,

v.

HART INTERCIVIC, INC.,

Patent Owner.

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PGR2020-00031  
Patent 10,445,966 B1

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Record of Oral Hearing  
Held: July 6, 2021

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Before CHARLES J. BOUDREAU, AMANDA F. WIEKER, and  
JASON M. REPKO, *Administrative Patent Judges*.

PGR2020-00031  
Patent 10,445,966 B1

APPEARANCES:

ON BEHALF OF THE PETITIONER:

ROBERT EVANS, ESQUIRE  
MICHAEL HARTLEY, ESQUIRE  
Lewis Rice, LLC  
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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Tuesday, July 6, 2021, commencing at 2:00 p.m., EDT, at the U.S. Patent and Trademark Office, by video/by telephone.

P R O C E E D I N G S

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2 JUDGE REPKO: This is an oral hearing for PGR 2020-  
3 00031. I'm Judge Repko. I'm joined by Judges Boudreau and  
4 Wieker. First of all, thank you for your flexibility and  
5 understanding in having to present your arguments at a video  
6 hearing. If any technical difficulties arise, please email or call  
7 the hearing staff. Our primary concern is your right to be heard  
8 so if you have any technical problems you feel undermines your  
9 ability to represent your client in any way, please let us know  
10 immediately and as soon as we're aware that someone gets  
11 disconnected we'll pause the hearing while they reconnect. Also  
12 when you are not speaking, please mute yourself. And, when  
13 you do speak, please identify yourself at the start of your  
14 remarks so the court reporter can get an accurate transcript.

15 At the conclusion please remain on the line so the court  
16 reporter -- you can answer any of the court reporter's questions.  
17 Feel free to present yourself however you feel comfortable, that  
18 means it's okay to sit or stand. There are members of the public  
19 listening to the oral hearing today. So if there's any confidential  
20 information, I don't think there is, but if there is, you need to let  
21 us know so we can make sure that we don't violate that  
22 confidentiality. At this time, we'd like counsel to introduce  
23 themselves and anyone with them, and I will begin with  
24 Petitioner's counsel.

1 MR. EVANS: Thank you, Your Honor. My name is Robert  
2 Evans. I'm here with Michael Hartley. We're both with the firm  
3 Lewis Rice. We're appearing on behalf of Petitioner.

4 JUDGE REPKO: Will you be presenting the argument fully  
5 today or handing it off?

6 MR. EVANS: I will be presenting the Section 101  
7 argument for the first ten or fifteen minutes and then I will hand  
8 it to Mr. Hartley who will handle the 102 and 103 arguments.

9 JUDGE REPKO: Thank you.

10 MR. EVANS: And 112.

11 JUDGE REPKO: Okay. And Patent Owner's counsel.

12 MR. OAKS: Yes, Your Honor. My name is Brian Oaks. I  
13 represent Patent Owner Hart Intercivic and here with me today is  
14 co-counsel Mark Speegle. To answer your question of the  
15 Petitioner I will be discussing the grounds 1 and 2 of the  
16 Petitioner's petition and Mr. Speegle will be addressing the  
17 remaining grounds.

18 JUDGE REPKO: Okay. Thank you. So our Hearing Order  
19 gave each party one hour to present their arguments. Since we  
20 don't have a clock for everyone to look at, I'll try to time you and  
21 give you a warning when you have about five minutes remaining.  
22 Petitioner's counsel will begin followed by Patent Owner's. Both  
23 parties may reserve some rebuttal time, but a party may not  
24 reserve more than half their total time unless there's some special  
25 circumstances. If you have some objections please raise them

1 during your rebuttal. We do note that Patent Owner's objected to  
2 Petitioner's demonstratives. At this time we're going to reserve  
3 ruling on that objection. We will allow presentation of the  
4 arguments and demonstratives here today, but ultimately, we will  
5 not consider them in our final written decision if we determine  
6 that it would be improper. Generally demonstratives are not  
7 evidence and will not be relied upon as evidence. It is visual  
8 aids about the arguments and evidence presented in the papers,  
9 but they cannot be used to advance new arguments or introduce  
10 evidence not previously presented in the record.

11 So with that, I'm going to invite Petitioner's counsel to  
12 begin, and I need to know how much time you will reserve for  
13 your rebuttal.

14 MR. EVANS: We'd like to reserve 15 minutes for rebuttal,  
15 Your Honor.

16 JUDGE REPKO: Okay. Thank you. You may begin.

17 MR. EVANS: Thank you, and good afternoon. I'm going  
18 to address Section 101 and then Mr. Hartley will address  
19 Sections 102, 103 and 112. I'd like to start by noting that all the  
20 claims in this patent are directed to the abstract idea of voting  
21 and verifying the addressee and authenticity of the printed record  
22 of the vote. If we look at slide 4, please. In the case Voter  
23 Verified, Inc. v. Election Systems & Software, LLP, the Federal  
24 Circuit found that,

25 "Humans have performed this fundamental activity of

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