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PROCEEDINGS

(1:00 p.m.)

JUDGE GIANNETTI: So we have the final hearing today in Case CBM 2013-00014. Let's start by getting appearances of counsel. Let's start with the Petitioner. Who is appearing today for the Petitioner?

MR. SON: Thank you, Your Honor. Anthony Son on behalf of U.S. Bancorp, as lead counsel, joined here today with Matthew Dowd, with backup counsel.

JUDGE GIANNETTI: Okay.

MR. SON: Mr. Dowd will be presenting the argument for U.S. Bancorp.

JUDGE GIANNETTI: Okay. Fine. Welcome, Mr. Son. Welcome, Mr. Dowd.

And for the Patent Owner?

MR. GRIFFITH: Casey Griffith, Your Honor.

JUDGE GIANNETTI: Anyone else?

MR. GRIFFITH: No one else will be arguing. And I have no other attorneys here, Your Honor.

JUDGE GIANNETTI: Okay. So welcome, Mr. Griffith.

So you have one hour per side. The Petitioner may reserve time for rebuttal.

And are you ready to proceed, Petitioner?

MR. DOWD: Yes, Your Honor.

1 JUDGE GIANNETTI: Okay. Mr. Dowd, proceed when
2 you are ready. We're starting a few minutes before 1:00.

3 Are you going to reserve any time for rebuttal?

4 MR. DOWD: Yes, Your Honor.

5 JUDGE GIANNETTI: How much time?

6 MR. DOWD: I would like to reserve 15 minutes.

7 JUDGE GIANNETTI: Okay. I will try to give you
8 five minutes warning when your time is expiring, your initial
9 time.

10 MR. DOWD: Thank you, Judge Giannetti.

11 Your Honors, we're here today for, as you said,
12 the final hearing for the CBM review of the '582 patent. And
13 as the Panel is well aware we have raised one issue with
14 respect to the challenged claims.

15 We have asserted that all of the challenged
16 claims are invalid under Section 35 U.S.C. 101 because none
17 of the claims claim patentable subject matter.

18 There are a few issues that had been raised,
19 one of which is the threshold issue that the Patent Owner has
20 raised and that goes to whether the Board has the authority
21 to rule on Section 101 subject matter patent eligibility in
22 the context of a CBM review.

23 We have addressed that in our brief. We have
24 -- we understand as well that the Board itself has ruled or
25 granted review in a number of separate CBM reviews based on

1 Section 101.

2 So it is our understanding that it is a settled
3 issue at this point with respect to whether the Board has
4 authority to review Section 101 arguments in the CBM review.

5 I will add -- I won't address anything further
6 beyond what is in the brief, unless the Board has questions,
7 but I will add two -- well, one additional item, and that's
8 the fact that both the Director of the PTO, the former
9 Director of the PTO, Director Kappos, and the Solicitor
10 General in their amicus brief in the CLS Bank case, which was
11 argued yesterday, have both taken the view that the Board has
12 authority to review subject matter of patent eligibility
13 questions under Section 101 in the context of a CBM review.

14 So if there are no questions about that, I will
15 focus on the merits of our argument and I will feel free to
16 address any points that my opponent raises during his time
17 during my rebuttal.

18 As to whether the challenged claims are patent
19 eligible, as we have said in our brief, it is in our view
20 clear that these claims must fall under Section 101 because
21 they are directed to nothing more than business method
22 claims, abstract ideas, that in some instances may attach as
23 a post-solution activity, the use of a generalized computer.

24 We certainly acknowledge, and I think if anyone
25 has listened or reviewed the transcript of the CLS argument

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