

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS AMERICA, INC.,
SAMSUNG ELECTRONICS CO., LTD., APPLE INC., and GOOGLE INC.
Petitioner,

v.

SMARTFLASH LLC,
Patent Owner.

Cases

CBM2014-00190¹, CBM2015-00028², CBM2015-00029³ (7,334,720 B2)
CBM2015-00031⁴, CBM2015-00032⁵, CBM2015-00033⁶ (8,336,772 B2)

¹ CBM2014-00190 (Samsung) instituted review of claims 13 and 14. Review of claims 13 and 14 in CBM2015-00118 (Apple) has been consolidated with this proceeding.

² CBM2015-00028 (Apple) instituted review of claims 1 and 2. Review of claim 1 in CBM2015-00125 (Google) has been consolidated with this proceeding.

³ CBM2015-00029 (Apple) instituted review of claims 3 and 15. Review of claim 15 in CBM2015-00125 (Google) has been consolidated with this proceeding.

⁴ CBM2015-00031 (Apple) instituted review of claims 1, 5, 8, and 10. Review of claims 5 and 10 in CBM2015-00059 (Samsung) has been consolidated with this case. Review of claims 1, 5, and 10 in CBM2015-00132 (Google) has been consolidated with this case.

⁵ CBM2015-00032 (Apple) instituted review of claims 14, 19, and 22. Review of claim 14 in CBM2015-00059 (Samsung) has been consolidated with this case. Review of claims 14 and 22 in CBM2015-00132 (Google) has been consolidated with this case.

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Before JENNIFER S. BISK, RAMA G. ELLURU, GREGG I. ANDERSON,
and MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

ELLURU, *Administrative Patent Judge*.

HEARING ORDER
Request for Oral Argument

Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd. (“Samsung”) and Smartflash LLC (“Smartflash” or “Patent Owner”) have each requested an oral hearing for covered business method patent review proceeding CBM2014-00190, pursuant to 37 C.F.R. § 42.70. Papers 35, 36.⁷

Apple Inc. (“Apple”) and Smartflash have each requested an oral hearing for covered business method patent review proceedings CBM2015-00028 and CBM2015-00029, pursuant to 37 C.F.R. § 42.70. Papers 30, 32.⁸

Apple Inc. (“Apple”) and Smartflash have each requested an oral hearing for covered business method patent review proceedings CBM2015-00031, CBM2015-0032, and CBM2015-00033, pursuant to 37 C.F.R. § 42.70. Papers 28, 30⁹.

Upon consideration by the panel, the parties’ requests are *granted*.
The hearing will be held in three sessions:

⁶ CBM2015-00033 (Apple) instituted review of claims 25, 26, 30, and 32. Review of claims 26 and 32 in CBM2015-00059 (Samsung) has been consolidated with this case.

⁷ Paper numbers refer to papers in CBM2014-00190.

⁸ Paper numbers refer to papers in CBM2015-00028.

⁹ Paper numbers refer to papers in CBM2015-00031.

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1. The first session will cover the oral hearing for CBM2014-00190, and will commence at 1:30 PM Eastern Standard Time, on January 6, 2016, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Samsung and Smartflash will each have 15 minutes of total time to present arguments.
2. The second session will cover the oral hearing for CBM2015-00028 and CBM2015-00029, and will commence at approximately 2:00 AM East Eastern Standard Time, on January 6, 2016, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Apple and Smartflash will each have 30 minutes of total time to present arguments in both cases.
3. The second session will cover the oral hearing for CBM2015-00031, CBM2015-00032, and CBM2015-00033, and will commence at approximately 3:00 PM East Eastern Standard Time, on January 6, 2016, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Apple and Smartflash will each have 45 minutes of total time to present arguments in all three cases.

In each session, the parties are free to divide the time among the cases as they choose, and must make clear at all times for purposes of the transcript, the case(s) which they are discussing. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in this review are unpatentable and has the burden on its motion to exclude evidence. Petitioner will, therefore, begin by presenting its case regarding the challenged claims and grounds for which the Board instituted trial in the proceeding. Patent Owner will then respond to Petitioner's arguments.

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Petitioner may reserve time to reply to arguments presented by Patent Owner. There is no motion to amend pending in any of the subject proceedings.

The hearing will be open to the public for in-person attendance that 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.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served *five* (5) business days before the hearing. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), regarding the appropriate content of demonstrative exhibits. The Board expects that the parties will meet and confer in good faith to resolve any objections to demonstrative exhibits, but if such objections cannot be resolved the parties may file any objections to demonstratives with the Board at least two business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

The parties also shall provide the demonstrative exhibits to the Board at least *two* business days prior to the hearing by emailing them to Trials@uspto.gov. The parties shall not file any demonstrative exhibits in

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this case without prior authorization from the Board. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location, and that if a demonstrative is not made fully available or visible to the judge participating in the hearing remotely, that demonstrative will not be considered. 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. The parties are also 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 and the ability of the judge participating in the hearing remotely to closely follow the presenter's arguments.

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

Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797. Requests for audio-visual equipment are to be made five (5) days in advance of the hearing date. The request is to be sent to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing.

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