

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YAMAHA CORPORATION OF AMERICA,
Petitioner,

v.

BLACK HILLS MEDIA, LLC,
Patent Owner.

Case IPR2013-00593

Patent 8,045,952

Case IPR2013-00594

Patent 8,050,652

Case IPR2013-00597

Patent 8,230,099

Case IPR2013-00598

Patent 8,214,873¹

Before BRIAN J. McNAMARA, STACEY G. WHITE, and
PETER P. CHEN, *Administrative Patent Judges*

McNAMARA, *Administrative Patent Judge.*

ORDER

Trial Hearing
37C.F.R. § 42.70

¹ This Order addresses an issue that is identical in the listed cases. We exercise our discretion to issue a single paper to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

A trial in each of the subject proceedings was instituted on March 20, 2014, in respective Decisions to Institute. A Revised Scheduling Order entered on August 27, 2014, in each of the subject proceedings set the date for oral hearing to October 20, 2014, if hearing were requested by the parties and granted by the Board. Both parties have requested oral hearing pursuant to 37 C.F.R. § 42.70. The request is GRANTED.

As there is significant commonality of issues among the subject proceedings, we will conduct a consolidated hearing. Each party will have 75 minutes of total argument time, including any rebuttal. Yamaha Corporation of America (“Petitioner”) bears the ultimate burden of proof that the claims at issue in these proceedings are unpatentable. Therefore, at oral hearing Petitioner will proceed first to present its case with regard to the challenged claims on which basis we instituted trial. Thereafter, Black Hills Media, LLC (“Patent Owner”) will argue its opposition to Petitioner’s case. Patent Owner will also present its arguments in support of its motion to exclude in each proceeding. Several issues in Patent Owner’s motions to exclude are common to all the proceedings.² Petitioner may use any time Petitioner reserved to rebut to Patent Owner’s opposition and to oppose Patent Owner’s motions to exclude. Finally, Patent Owner may use any time it reserved solely to rebut Petitioner’s opposition to Patent Owner’s motions to exclude.

There is a strong public policy interest in making all information presented in these proceedings public, as the *inter partes* review determines the patentability

² In IPR2013-00597, Patent Owner also filed Motion to Amend. No argument is required, however, because Patent Owner’s Motion to Amend cancels claims, but does not propose substitute claims.

of claims in an issued patent and thus affects the rights of the public. This policy is reflected in part, for example, in 35 U.S.C. § 316(a)(1) and 35 U.S.C. § 326(a)(1) which provide that the file of any *inter partes* review or post grant review be made available to the public, except that any petition or document filed with the intent that it be sealed shall, if accompanied by a motion to seal, be treated as sealed pending the outcome of the ruling on the motion. There are no motions to seal in the subject proceedings. Accordingly, the Board exercises its discretion to make the oral hearing publically available via in-person attendance.

Specifically, the hearing will commence at 1:00 PM Eastern Time, on October 20, 2014, and it 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 serve 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 business days before the hearing. The parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118), regarding the appropriate content of demonstrative exhibits. Any issue regarding demonstrative exhibits should be resolved at least three business days prior to the hearing by way of a joint telephone conference call to the Board. The parties are responsible for requesting such a conference sufficiently in advance of the hearing to accommodate this requirement. Any objection to demonstrative exhibits that is not presented timely will be considered waived. Demonstratives should be filed at the Board no later than two business days before the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing.

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 no later than 5 business 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.** 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 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.

Case IPR2013-00593; -00594;-00597;-00598
Patent 8,045,952; 8,050,652; 8,230,099; 8,214,873

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