

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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YAMAHA CORPORATION OF AMERICA,  
Petitioner,

v.

BLACK HILLS MEDIA, LLC,  
Patent Owner.

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Case No. IPR2013-00593, Patent No. 8,045,952  
Case No. IPR2013-00594, Patent No. 8,050,652  
Case No. IPR2013-00597, Patent No. 8,230,099  
Case No. IPR2013-00598, Patent No. 8,214,873

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Held: October 20, 2014

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Before: BRIAN McNAMARA, PETER CHEN, and STACEY  
WHITE, *Administrative Patent Judges*.

1 APPEARANCES:

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3 ON BEHALF OF THE PETITIONER:

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21 The above-entitled matter came on for hearing on Monday,  
22 October 20, 2014, commencing at 1:00 p.m., at the U.S. Patent and  
23 Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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P R O C E E D I N G S

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29 JUDGE McNAMARA: Good afternoon, everyone. This  
30 is the oral hearing in four consolidated cases, Yamaha Corporation of  
31 America, Petitioner, versus Black Hills Media, LLC, Patent Owner.  
32 The cases are IPR2013-00593, -00594, -00597 and -00598.

33 Beginning with the Petitioner, could I have counsel  
34 please introduce themselves.

1 MR. FEHRMAN: Good afternoon, Your Honor, I'm  
2 David Fehrman from Morrison Foerster, with me is Mehran  
3 Arjomand.

4 JUDGE McNAMARA: Thank you. Patent Owner?

5 MR. ENGELLENER: Good afternoon, Your Honor,  
6 Tom Engellenner, from Pepper Hamilton. With me, Lana Gladstein,  
7 also from Pepper Hamilton.

8 JUDGE McNAMARA: Thank you. Well, welcome  
9 everyone to the Patent Trial and Appeal Board. As we said in the  
10 initial scheduling order, each party will have 75 minutes of total  
11 argument time. You can allocate that any way you think is most  
12 efficient for your particular argument. The Petitioner bears the  
13 ultimate burden, so the Petitioner will go first, present its case with  
14 the -- with respect to the challenged claims. Thereafter the Patent  
15 Owner will argue its opposition to the Petitioner's case.

16 The Patent Owner, I believe, also has a motion to exclude  
17 that is pending, so it will present its arguments in support of the  
18 motion to exclude. Thereafter, we will hear from the Petitioner, who  
19 will use any time it has reserved to rebut the Patent Owner's  
20 opposition, and to oppose the Patent Owner's motion to exclude.

21 And, finally, we will hear from the Patent Owner solely  
22 on the issue of rebutting the Petitioner's opposition to its motion to  
23 exclude.

24 Is that clear?

25 (No response.)

1 JUDGE McNAMARA: Is everybody ready to begin?

2 MR. ENGELLENER: Yes, Your Honor.

3 JUDGE: All right, let's begin with the Petitioner. Is  
4 there some amount of time you would like me to alert you to?

5 MR. FEHRMAN: Yes, if you could alert me at 50  
6 minutes.

7 JUDGE McNAMARA: Fifty minutes.

8 MR. FEHRMAN: Good afternoon. We have, as you  
9 mentioned, four IPRs, all being argued here, with four different  
10 patents listed here in slide 1. I'm going to start with the two patents  
11 that are related, parent and continuation, the Qureshey patents,  
12 IPR2013-00593, and 00594. Beginning just to summarize the  
13 grounds of institution in the '952 patent, and those are three grounds,  
14 claims 9, 10 and 14 as anticipated by Berman, 13 as obvious over  
15 Berman, and 9, 10 and 14 as anticipated by Wolff.

16 The '652 patent, the continuation, numerous claims as  
17 being obvious over White, and many claims obvious over Qureshey  
18 and Berman, and three claims obvious over Qureshey, Berman and  
19 Leeke. Indicated on slide 4.

20 So, the primary issues of claim construction involved  
21 here, one which covers all four of the patents, and that's playlist,  
22 another is playlist assigned to the electronic device. Here today in our  
23 time, opening, we'll focus on the playlist. So, as is the case in all  
24 issues of claim construction, we look at the claim language itself, the  
25 specification and extrinsic evidence.

1                   So, looking at claim 9 of the '952 patent, indicated on  
2 slide 7, it identifies a playlist, and then it says, "The playlist  
3 identifying a plurality of songs." It also has another recitation of  
4 "information enabling the electronic device to obtain the ones of the  
5 plurality of songs." So, two recitations on the -- in two receiving  
6 steps.

7                   The specification identifies the playlist 1528 at column  
8 21, lines 62 to 65, which was the basis of the Board's construction in  
9 the institution decision, and it has a sentence that says, "A playlist,  
10 which is a list of audio files," and it continues, "Associated URLs of  
11 where the audio files were retrieved from."

12                   The paragraph above that gives more detailed description  
13 of what the system -- how it's constructed and that's basically relating  
14 to figure 15 of the patent, we will illustrate on slide 10, the portion at  
15 column 21, lines 40 to 52. And figure 15 has three different devices,  
16 network-enabled audio devices. The first highlight here on slide 10 is,  
17 "The network-enabled audio device 1510 has a storage space 1512 for  
18 network-enabled audio device software 1526." And then it recites, "A  
19 playlist 1528," it has a comma, and says, "and associated URLs and  
20 songs within the playlist."

21                   Similarly, the --

22                   JUDGE McNAMARA: Counsel, what's the difference  
23 between a playlist and songs within the playlist?

24                   MR. FEHRMAN: The playlist is identification  
25 information and the songs are the actual song data.

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