

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

-----x

ZOLL LIFECOR CORPORATION,	Cases Nos.
Petitioner,	IPR2013-00609
	IPR2013-00612
	IPR2013-00613
v.	IPR2013-00615
PHILIPS ELECTRONICS NORTH AMERICA	IPR2013-00616
CORPORATION,	IPR2013-00618
Patent Owner.	

-----x

TRANSCRIPT of Telephonic Conference,  
as reported by Nancy C. Bendish, Certified Court  
Reporter, RMR, CRR, RSA and Notary Public of the  
States of New York and New Jersey, on Tuesday,  
November 5, 2013, commencing at 1 p.m.

B E F O R E:

JUDGE SALLY MEDLEY

JUDGE QUINN

1 A P P E A R A N C E S: (Via Telephone)  
 2  
 3 FISH & RICHARDSON  
 12390 El Camino Real  
 San Diego, CA 92130  
 4 BY: JOHN C. PHILLIPS, ESQ.  
 JOHN A. DRAGSETH, ESQ.  
 5 For the Petitioner  
 6  
 7 FINNEGAN, HENDERSON, FARABOW,  
 GARRETT & DUNNER, LLP  
 901 New York Avenue, NW  
 Washington, DC 20001  
 8 BY: J. MICHAEL JAKES, ESQ.  
 DENISE W. DeFRANCO, ESQ.  
 9 For the Patent Owner  
 10  
 11 ALSO PRESENT:  
 12 RANDALL BERMAN  
 Philips IP&S  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

[Page 2]

1 JUDGE MEDLEY: Good afternoon, this  
 2 is Judge Medley. I have with me on-line Judge  
 3 Quinn. I'd like to take a roll call first.  
 4 This is in reference to  
 5 IPR2013-00609, 612, 613, 615, 616 and 618. I'd like  
 6 to begin with Petitioner.  
 7 MR. JAKES: Good afternoon, this is  
 8 Mike Jakes for Philips. I think I jumped the gun  
 9 there. I think you wanted the Petitioner first, but  
 10 we had asked for the call.  
 11 JUDGE MEDLEY: Okay, Mr. Jakes,  
 12 that's fine. Do you have anybody with you?  
 13 MR. JAKES: Yes, Denise DeFranco from  
 14 my firm is with me and Randall Berman from Philips,  
 15 the Patent Owner, is also on the line.  
 16 JUDGE MEDLEY: Okay. And they're --  
 17 but they are not listed as counsel?  
 18 MR. JAKES: No.  
 19 JUDGE MEDLEY: Okay. Petitioner?  
 20 MR. PHILLIPS: Petitioner, John  
 21 Phillips, lead counsel for Fish & Richardson is  
 22 here, along with John Dragseth, who I believe has  
 23 made an appearance as well, from Fish & Richardson.  
 24 JUDGE MEDLEY: Okay. All right.  
 25 So we understand that Patent Owner

[Page 3]

1 requested the call and just before we get started,  
 2 do we have a court reporter?  
 3 THE REPORTER: Yes, we do. My name  
 4 is Nancy Bendish.  
 5 JUDGE MEDLEY: Okay. Thank you,  
 6 Nancy.  
 7 And I'd also like to clarify, we got  
 8 the notification that this was in respect to just  
 9 six of the cases? Because there are eight.  
 10 MR. JAKES: That's right. This is in  
 11 respect to just six of them for this particular  
 12 motion that we want to file.  
 13 JUDGE MEDLEY: Okay. Then we'll hear  
 14 from Patent Owner, please.  
 15 MR. JAKES: This is Mike Jakes for  
 16 the Patent Owner, Philips.  
 17 We're asking permission to file a  
 18 motion to dismiss these six IPRs under 35 U.S.C.  
 19 315(b). There is another litigation that was not  
 20 identified in the petition that involves these six  
 21 patents. We identified it in our mandatory  
 22 disclosures. That's a case that's pending in the  
 23 District of Massachusetts and it involved these same  
 24 six patents. The complaint in that case was filed  
 25 and served in October of 2010.

[Page 4]

1 The defendant in that case is Zoll  
 2 Medical Corporation and that's the parent  
 3 corporation of the Petitioner in this case, Zoll  
 4 Lifecor. That complaint that was filed in October  
 5 of 2010 alleged infringement of these six patents  
 6 and we actually have a trial scheduled to begin next  
 7 month.  
 8 As we understand the decisions of  
 9 this Board, it doesn't matter that there was a later  
 10 complaint filed against Zoll Lifecor, who is the  
 11 Petitioner in this case. There was a case of like  
 12 universal remote, which was decided in August of  
 13 this year.  
 14 So the only issue that really appears  
 15 to be is whether Zoll Medical, the parent of Zoll  
 16 Lifecor, is a privy of the Petitioner since it was  
 17 served with a complaint under 315(b). And so, in  
 18 other words, if Zoll Medical, which is the defendant  
 19 in the Massachusetts case, was a privy of Zoll  
 20 Lifecor, the Petitioner, then there is no standing  
 21 to bring these IPRs.  
 22 I understand that the privy issue  
 23 can be a fact-dependant question, but the public  
 24 record here is, I think, conclusive that Zoll  
 25 Medical is a privy of Zoll Lifecor. It's the parent

[Page 5]

<p>1 corporation. Zoll Lifecor is a wholly-owned 2 subsidiary. There is public information, such as a 3 press release, that says that Zoll will operate the 4 Lifecor business through its Zoll Lifecor 5 subsidiary. There are SEC filings that say Zoll 6 manufacturers and markets a wearable defibrillator 7 system through its subsidiary, Zoll Lifecor. And 8 there are the same, many of the same people 9 involved, same law firms, same general counsel. The 10 president and COO of Zoll Lifecor is an officer -- 11 JUDGE MEDLEY: Okay, let me just 12 interrupt you, please. This is Judge Medley. I 13 just want to interrupt you. 14 Today we're just here to decide 15 procedurally how to go forward. We don't really 16 need to hear the merits of the case or what you plan 17 to argue, so I just wanted to direct us back to, how 18 do we proceed procedurally. What's the appropriate 19 thing to do here. 20 And so I have a question for you 21 before we turn it over to hear from Petitioner. Why 22 can't we just run the one case just like we did the 23 other case, in that you have an opportunity to file 24 a preliminary response and in that response you can 25 include why no inter parte review should be</p> <p style="text-align: right;">[Page 6]</p>	<p>1 JUDGE MEDLEY: Okay. I'd like to 2 hear from Petitioner now, please. 3 MR. PHILLIPS: Yes, this is John 4 Phillips from Fish &amp; Richardson. If we get into the 5 factual history, I'd like to get help from John 6 Dragseth, who knows the history better than I do. 7 But to respond to some of the points, 8 I don't believe the petitions are facially 9 deficient. They identify the relevant parties. 10 Zoll Lifecor and Zoll Medical are separate corporate 11 entities. Philips has treated them as separate 12 corporate entities in the past by suing them as 13 separate corporate entities on the same patents. 14 If there are multiple -- we don't 15 oppose the filing of the motions. If the filing of 16 the motions is granted, as opposed to putting forth 17 the privity arguments in the preliminary response, 18 we think it would be equitable for us patent 19 owner -- I'm sorry, Petitioner, to get a response to 20 the privy argument, because there are two sides to 21 the position and we feel we're in the better 22 position to respond. 23 If the preliminary response is filed, 24 we would not get the -- absent a motion to respond 25 to oppose that -- those arguments, we wouldn't get</p> <p style="text-align: right;">[Page 8]</p>
<p>1 instituted? 2 So you have every opportunity there 3 to file your response and address the 315(b) issue 4 in that context and, therefore, we're kind of at -- 5 I guess puzzled a little bit that you'd want 6 separate briefings and in the form of a motion to 7 dismiss, as we see it as not necessary. 8 MR. JAKES: Your Honor, and for the 9 benefit of the court reporter, this is Mike Jakes 10 again on behalf of Phillips. 11 The petitions are really facially 12 deficient for failing to identify all the 13 litigation. This really is a standing issue which 14 we think can, for efficiency, be taken up before we 15 have to file a preliminary response. 16 In our preliminary response we would 17 also have to address the merits of their petition 18 and in view of the public record it seems very clear 19 that there was a privity issue. They were in 20 privity. The complaint was filed that for 21 efficiency it would be better to just file these 22 motions and dispose of the six IPRs on that ground 23 before the Patent Owner is put to the burden and 24 expense of having to respond on the merits in the 25 preliminary response.</p> <p style="text-align: right;">[Page 7]</p>	<p>1 an opportunity to present the other side of the 2 argument. 3 JUDGE MEDLEY: Okay. Well, I think 4 the Board on occasion has authorized a response to 5 the preliminary filing, so I don't think it's 6 necessarily, you know, that you would never get to 7 respond to a preliminary response, which it is the 8 status quo not to. 9 All right, do you have anything else, 10 Mr. Phillips? 11 MR. PHILLIPS: I don't. John 12 Dragseth, did you want to add any facts, relevant 13 facts to this? 14 MR. DRAGSETH: I think you hit it 15 well. I don't know that any more facts are relevant 16 at this stage. 17 JUDGE MEDLEY: Okay. I will 18 conference with my co-worker and then we'll get back 19 with you in just a minute. 20 (Pause.) 21 JUDGE MEDLEY: Okay, this is Judge 22 Medley. I'm back. 23 The panel has conferred and we are 24 not persuaded that we need to deviate from the norm 25 in this case. So we would prefer that these</p> <p style="text-align: right;">[Page 9]</p>

<p>1 arguments come in the form of a preliminary 2 response. In that respect, you know, that you would 3 be confined to the page limit but circumventing the 4 page limit. 5 And I do appreciate and understand 6 that Philips doesn't want to maybe address the 7 merits of the case if this were to go away under the 8 315(b) issue. However, I will point out, a 9 preliminary response is totally optional for the 10 Patent Owner and so you can use that tool as you see 11 fit (indiscernible), even address the merits of the 12 case if you don't want to. So we're not persuaded 13 by that argument either. 14 The Board will send out a short order 15 memorializing the conference call approximately 16 tomorrow. Any questions or comments? 17 MR. PHILLIPS: Your Honor, John 18 Phillips for the Petitioner. 19 At what point -- if the preliminary 20 response does include the 315(b) arguments, at what 21 point would it be appropriate for us to seek a 22 response to those arguments? 23 JUDGE MEDLEY: I think you should see 24 what they say first. 25 MR. PHILLIPS: Fair enough.</p> <p style="text-align: right;"><b>[Page 10]</b></p>	<p>1 where we were earlier, and this has been raised in a 2 couple of cases that the Board has had and this is a 3 way to proceed it through the normal channels of 4 briefing. 5 Any other questions or comments? 6 MR. JAKES: Not from the Patent 7 Owner. 8 MR. PHILLIPS: Not from Petitioner. 9 Thank you, Your Honor. 10 JUDGE MEDLEY: Okay. And who 11 received the court reporting? 12 MS. DeFRANCO: Petitioner did -- 13 excuse me, Patent Owner did. 14 JUDGE MEDLEY: Okay, Patent Owner, 15 when would you be able to file that? 16 MS. DeFRANCO: We haven't consulted 17 with the court reporter. 18 Ms. Court Reporter, can you help us 19 answer that question. 20 THE REPORTER: It's not very lengthy. 21 When do you need it? I can do it pretty quickly. 22 JUDGE MEDLEY: I don't think that the 23 Board will hold up the order. Tomorrow would be 24 great, file it tomorrow. 25 And it should be filed as a paper, a</p> <p style="text-align: right;"><b>[Page 12]</b></p>
<p>1 JUDGE MEDLEY: All right. Any other 2 questions or comments? 3 MS. DeFRANCO: Your Honor, this is 4 Denise DeFranco. I'm going to ask for permission to 5 make two further points to Your Honor. 6 JUDGE MEDLEY: Okay. 7 MS. DeFRANCO: On behalf of Philips. 8 I just would like to direct your 9 attention to Section 312(a)(2) of the patent statute 10 which says that the petition cannot even be 11 considered unless the Petitioner identifies all real 12 parties in interest. I think that that is what 13 makes the petition facially deficient. 14 I'd also like to note for the record 15 that the Petitioner did not oppose our request for 16 an opportunity to file a motion. 17 JUDGE MEDLEY: Right, okay. I 18 understand that and I understand 312(a)(2), but the 19 way I understand it, Petitioner is under the 20 impression that they did list all the real parties 21 in interest. So this issue is controversial between 22 the parties, correct? 23 MR. PHILLIPS: That's correct from 24 Petitioner's view, yes. 25 JUDGE MEDLEY: So then we're back to</p> <p style="text-align: right;"><b>[Page 11]</b></p>	<p>1 quick paragraph or sentence that says transcript of 2 the conference call. 3 Okay. Any other questions or 4 comments? All right. Thank you very much. 5 (End of Phone Conference 1:14 p.m.) 6 -o0o- 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;"><b>[Page 13]</b></p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

I, NANCY C. BENDISH, a Certified Court Reporter and Notary Public of the States of New York and New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the telephonic proceedings as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any party in this action and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the event nor outcome of this action.

---

Notary Public of the State of New Jersey  
Certificate No. XI00836

Dated: November 5, 2013

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.