

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DELL INC., HEWLETT-PACKARD COMPANY, and NETAPP, INC.,  
Petitioners,

v.

ELECTRONICS AND TELECOMMUNICATIONS RESEARCH  
INSTITUTE,  
Patent Owner.

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Case IPR2013-00635  
Patent 6,978,346 B2

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Before BRIAN J. McNAMARA, MIRIAM L. QUINN, and  
GREGG I. ANDERSON, *Administrative Patent Judges*.

QUINN, *Administrative Patent Judge*.

ORDER  
Trial Hearing  
35 U.S.C. § 316(a)(10)

Petitioner and Patent Owner requested a hearing in each of the above proceedings pursuant to 37 C.F.R. § 42.70(a). *See* Papers 34–35. The requests are *granted*.

Each party will have forty-five (45) minutes of time to present arguments. Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. Therefore, Petitioner will proceed first to present its case as to the challenged claims, and may reserve rebuttal time. Patent Owner then will respond to Petitioner’s case. After that, Petitioner may use the rest of its time to respond to Patent Owner’s presentation.

The hearing will commence at 1 PM Eastern Time, December 18, 2014, and 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 served basis. The Board will provide a court reporter for the hearings, and the reporter’s transcripts will constitute the official record of the hearings.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served five business days prior to the hearings. The parties shall confer with each other regarding any objections to demonstrative exhibits in each proceeding, and file demonstrative exhibits with the Board at least two business days prior to the hearing. For any issue that cannot be resolved after conferring with the opposing party, the parties may file jointly a one-page list of objections at least two business days prior to the hearing. The list should identify with particularity which demonstrative exhibits are subject to objection and include a short statement (no more than one sentence) of the reason for each objection. No argument or further explanation is permitted. We will consider the objections and schedule a conference call if necessary.

Otherwise, we will reserve ruling on the objections until after the hearing. Any objection to demonstrative exhibits that is not presented timely will be considered waived.

The parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, slip op. (PTAB Oct. 23, 2013) (Paper 118), regarding the appropriate content of demonstrative exhibits. 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 hearings to ensure the clarity and accuracy of the reporter's transcripts. The parties also should note that at least one member of the panel will be attending the hearings from a remote location, and that if a demonstrative is not filed or otherwise made fully available or visible to the judge(s) presiding over the hearing remotely, that demonstrative will not be considered.

The Board expects lead counsel for Petitioner and Patent Owner to be present at the hearings, although any back-up counsel may make the actual presentation, in whole or in part. If lead counsel for either party will not be in attendance at the hearings, the Board should be notified via a joint conference call no later than two days prior to the hearings to discuss the matter.

Requests for audio-visual equipment at the hearings are to be made five days in advance of the hearing date. The requests must be sent to *Trials@uspto.gov*. If the requests are not received timely, equipment may not be available on the day of the hearings. Furthermore, if the parties have questions as to whether demonstrative exhibits would be sufficiently visible

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and available to all of the judges, the parties are invited to contact the Board  
at 571-272-9797.

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