

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VMWARE, INC., INTERNATIONAL BUSINESS MACHINES
CORPORATION and ORACLE AMERICA, INC.
Petitioners,

v.

ELECTRONICS AND TELECOMMUNICATIONS RESEARCH INSTITUTE,
Patent Owner.

Case IPR2014-00901
Case IPR2014-00949¹
Patent 6,978,346 B2

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

QUINN, Administrative Patent Judge.

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

¹ This case was joined with IPR2014-00901 on Jan. 28, 2015 by Order in IPR2014-00949, Paper 25.

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The parties have requested an oral hearing in each of these proceedings pursuant to 37 C.F.R. § 42.70. *See*, Papers 29, 30. We grant the parties' request.

These proceedings will be heard on August 28, 2015. Each party will have 45 minutes of total argument time. VMware, Inc., International Business Machines Corporation and Oracle America, Inc. (collectively, "Petitioners") bear the ultimate burden of proof that the claims at issue in this review are unpatentable. Therefore, Petitioner VMware in IPR2014-00901 will proceed first to present Petitioners' case with regard to the challenged claims on which basis we instituted trial. Thereafter, Electronics And Telecommunications Research Institute ("Patent Owner") will respond to Petitioners' case. After that, Petitioner VMware will make use of the rest of its time responding to Patent Owner. There are no motions to amend or other motions to be addressed at the hearing, and no rebuttal time will be allotted to Patent Owner. Furthermore, separate argument by Petitioner IBM and Oracle will not be allowed, unless such argument has been requested and authorized, at least *two business days* before hearing.

There is a strong public policy interest in making all information presented in these proceedings public, as the review determines the patentability 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. Accordingly, we exercise our discretion to make the oral hearing publically available via in-person attendance.

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Specifically, the hearing will commence at 1:30 PM Eastern Time, on the aforementioned date, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, and it will be open to the public for in-person attendance. 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*, IPR2013-00033, Paper 118 (Oct. 23, 2013), regarding the appropriate content of demonstrative exhibits.

Any issue regarding demonstrative exhibits should be resolved at least two 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 timely presented will be considered waived. Demonstratives should be filed at the Board no later than *two 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 5 days in advance of the hearing date. The request is to be sent directly 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

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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 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 filed or otherwise made fully available or visible to the judge presiding over 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. Documents presented on the Elmo projector may not be visible to remote judges, so please plan accordingly.

The Board expects lead counsel for each party (including each of the joined Petitioners) to be present in person at the oral hearing. However, lead or backup counsel of the presenting party may put forward the party's argument. If either party anticipates that its lead counsel will not be attending the oral hearing, 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.

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PETITIONER:

Katherine Kelly Lutton
Timothy W. Riffe
FISH & RICHARDSON P.C.
lutton@fr.com
IPR27450-0011IP1@fr.com

Todd Friedman
Gregory Arovas
Eugene Goryunov
Benjamin Lasky
KIRKLAND & ELLIS LLP
todd.friedman@kirkland.com
greg.arovas@kirkland.com
eugene.goryunov@kirkland.com
Benjamin.lasky@kirkland.com

PATENT OWNER:

Mathew C. Phillips
Derek Meeker
RENAISSANCE IP LAW GROUP LLP
matthew.phillips@renaissanceiplaw.com
derek.meeker@renaissanceiplaw.com