

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYMANTEC CORP. and
BLUE COAT SYSTEMS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01892¹
Patent 8,677,494 B2

Before JAMES B. ARPIN, ZHENYU YANG, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

BOUDREAU, *Administrative Patent Judge*.

REVISED HEARING ORDER
35 U.S.C. § 326(a)(10) and 37 C.F.R. § 42.70

¹ Case IPR2016-00890 has been joined with the instant proceeding.

IPR2015-01892
Patent 8,677,494 B2

Petitioner and Patent Owner each have requested a hearing pursuant to 37 C.F.R. § 42.70(a) in the above-captioned case. Paper 38; Paper 40. The requests for a hearing were granted in a Hearing Order entered on November 21, 2016, setting a hearing for December 16, 2016, in the USPTO's West Coast Regional Office in San Jose, California. Paper 45, 2. Patent Owner subsequently requested that the hearing be moved to Alexandria, Virginia. In particular, Patent Owner explained that it is scheduled to participate in a hearing for Case IPR2015-01979 in Alexandria, Virginia, on December 15, 2016, the day before the scheduled hearing in the instant proceeding. Patent Owner represents that it has conferred with Petitioner and that Petitioner does not oppose its request to change the location of the hearing. Because this panel includes at least one member located in Alexandria, Virginia, and because hearing room staff and resources are available to support the hearing in Alexandria, Virginia, on the requested date, Patent Owner's request to change the location of the hearing is *granted*.

The hearing will commence at **1:00 PM Eastern Time** on **December 16, 2016**, on the ninth floor of **Madison Building East, 600 Dulany Street, Alexandria, Virginia (Hearing Room D)**. The hearing will be open to the public for in-person attendance, to be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing.

Petitioner and Patent Owner each will have a total of thirty (30) minutes to present arguments. Petitioner bears the ultimate burden of proof that the claims under review are unpatentable. Consequently, Petitioner will

open the hearing by presenting its case regarding the challenged claims and the ground for which the Board instituted review in the proceeding. Patent Owner then will respond to Petitioner's arguments. Because Patent Owner has filed a Motion to Exclude Evidence (Paper 41) and a Motion for Observations on Cross-Examination (Paper 42), Patent Owner may discuss those motions during its allotted time. Petitioner may reserve rebuttal time to respond to Patent Owner's arguments regarding the challenged claims and to Patent Owner's arguments, if any, regarding its motions. If Patent Owner does not present arguments during its allotted time regarding its motions, Petitioner may not present arguments during its rebuttal time regarding Patent Owner's motions. Patent Owner may reserve rebuttal time only to respond to Petitioner's arguments regarding Patent Owner's motions. If Petitioner does not present arguments during its rebuttal time regarding Patent Owner's motions, Patent Owner also may not present arguments during its rebuttal time regarding its motions, and any rebuttal time reserved by Patent Owner shall be surrendered. The fundamental rule governing our hearings is that the party bearing the burden of persuasion on an issue may speak last on that issue.

Under 37 C.F.R. § 42.70(b), Petitioner and Patent Owner shall serve any demonstrative exhibits upon each other at least seven (7) business days prior to the hearing. The parties also shall provide the demonstrative exhibits to the Board at least seven (7) business days prior to the hearing **by emailing them to Trials@uspto.gov. Despite the requirement of 37 C.F.R. § 42.70(b), the parties shall not file any demonstrative exhibits in this case without our prior authorization.** 37 C.F.R. § 42.5(b). The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. Board*

of Regents of the University of Michigan, Case IPR2013-00041, slip op. 2–5 (PTAB Jan. 27, 2014) (Paper 65), and *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033, slip op. at 2–4 (PTAB Oct. 23, 2013) (Paper 118), for guidance regarding the appropriate content of demonstrative exhibits. To aid in the preparation of an accurate transcript, Petitioner and Patent Owner each shall provide paper copies of its demonstratives to the court reporter on the day of the hearing. We remind the parties that demonstratives are **not** evidence, and that neither the demonstratives nor such paper copies shall become part of the record of these proceedings.²

We expect lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party's arguments. If either party anticipates that its lead counsel will not attend the oral hearing, the parties shall request and make themselves available for a conference call with us to occur no later than two (2) business days prior to the oral hearing to discuss the reasons for that lead counsel's absence. **Any requests regarding special equipment or needs, such as for audio visual equipment, should be directed to Trials@uspto.gov. Requests for special equipment will not be honored unless presented in a separate communication directed to the identified email address not less than five (5) business days before the hearing.**

² After conferring with each other in a good faith effort to resolve any and all objections to demonstratives, the parties may request a conference call with us to discuss any remaining objections to the other party's demonstratives no less than two (2) business days prior to the hearing.

Judge Arpin (Denver) and Judge Boudreau (San Jose) will participate in the hearing remotely. If a demonstrative is not made available to the Board in the manner indicated above, that demonstrative may not be available to each of the judges during the hearing and may not be considered. Further, the parties should assume that images projected, using audio visual equipment in Alexandria, will not be visible to Judge Arpin in Denver or to Judge Boudreau in San Jose. Because of limitations on the audio transmission systems in our hearing rooms, the presenter may speak only when standing at the hearing room podium. The parties also are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced and each paper or exhibit from the record during the hearing by its number to ensure the ability of each judge to follow the presenter's arguments and the clarity and accuracy of the court reporter's transcript.

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.