

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC. and
BLUE COAT SYSTEMS LLC,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2016-00159¹
Patent 8,677,494 B2

Before ZHENYU YANG, CHARLES J. BOUDREAU, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

BOUDREAU, *Administrative Patent Judge*.

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

¹ Case IPR2016-01174 has been joined with the instant proceeding.

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Petitioner and Patent Owner each have requested a hearing pursuant to 37 C.F.R. § 42.70(a) in the above-captioned case. Paper 25; Paper 33. The requests for a hearing are hereby *granted*.

The hearing will commence at **10:00 AM Pacific Time** on **February 16, 2017**, on the 3rd floor of the USPTO's **West Coast Regional Office, 26 South 4th Street, San Jose, California**. 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 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 the parties have filed Motions to Exclude Evidence (Papers 31, 35) and Patent Owner has filed a Motion for Observations on Cross-Examination (Paper 34), the parties may discuss those respective motions during their allotted time. Petitioner shall address its Motion during its opening argument, if it so chooses, and 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 or Petitioner's Motion. If Patent Owner does not present arguments during its allotted time regarding either of its motions or Petitioner's Motion, Petitioner may not present arguments during its rebuttal time regarding such motions. Further, Patent Owner may

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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 business days prior to the hearing. The parties also shall provide the demonstrative exhibits to the Board at least seven 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 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 business days before the hearing.**

Judges Yang and McShane 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 San Jose, will not be visible to Judges Yang and McShane. 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

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 business days prior to the hearing.

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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.

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