

NEOCHORD, INC., :
Petitioner, : Inter Partes
: Review
v. :
:
UNIVERSITY OF :
MARYLAND, :
BALTIMORE, : No. IPR2016-00208
Patent Owner. :

- - -

Tuesday, February 7, 2017

- - -

Completely telephonic Inter Partes
Review, commenced at 1:31 p.m., on the
above date, before Madelina Cocca, a
Court Reporter and Notary Public.

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21 ALSO PRESENT:

22 Judge Worth

Judge Medley

23 Judge Franklin

24

1 JUDGE WORTH: First, let's
2 take appearances.

3 MR. MILCH: Erik Milch and
4 Scott Talbot of Cooley for Patent
5 Owner.

6 MR. PEDERSEN: This is Brad
7 Pedersen and Chad Wickman for the
8 Petitioner.

9 JUDGE WORTH: Okay.

10 Before we get started, I
11 would say that we can hold off on
12 any merits discussion, at this
13 point.

14 Just to direct the
15 conversation, the purpose of this
16 call is Patent Owner has requested
17 authorization to file a motion or
18 for briefing and so, at this
19 point, we're interested in just an
20 authorization aspect, rather than
21 the briefing aspect.

22 So we're going to start with
23 Patent Owner, but the question
24 that we want to focus on right now

1 is, is this a timely request, or
2 is it too late or waived. So
3 let's begin with Patent Owner.

4 MR. MILCH: Thank you, Your
5 Honor.

6 So to the timing issue, the
7 Supreme Court said that State
8 Sovereign Immunity can be raised
9 at any time during a proceeding,
10 including on appeal. A case
11 that's directly on point is
12 Calderon versus Ashmus, and the
13 cite is 523 US 740, 745 note 2.

14 Also, there's the case of
15 Florida Department of State versus
16 Treasure Salvors, which is 458 US
17 670 683, and that case, the
18 Florida Department of State case,
19 gets to the issue that was raised
20 by Petitioner regarding the fact
21 that Patent Owner has already
22 responded in this action and
23 essentially raised defenses.

24 The Florida Department of

1 State case, after the fact that
2 defenses were offered, does not
3 foreclose the 11th Amendment for
4 protection from being considered.
5 So we would submit that as far as
6 timing is concerned, there is
7 sufficient precedent to allow this
8 to proceed.

9 Given that this a
10 jurisdictional issue, it can be
11 raised at any time to the
12 extent -- and I can pause there if
13 you have any questions about the
14 jurisdictional issue, or I can
15 move on to the waiver issue.

16 JUDGE WORTH: Just on the
17 facts of this case, why did Patent
18 Owner wait to raise this issue?

19 MR. MILCH: Your Honor,
20 given that the Covidien case came
21 out just two weeks ago, not even
22 two weeks ago, there was no
23 precedent for the fact that an IPR
24 proceeding would be relevant in

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