

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

FOCAL IP, LLC,
Patent Owner.

Cases: IPR2016-01254¹
Patent 8,457,113 B2

Before SALLY C. MEDLEY, JONI Y. CHANG, and
BARBARA A. PARVIS, *Administrative Patent Judges*.

PARVIS, *Administrative Patent Judge*.

ORDER
Request for Oral Hearing
37 C.F.R. § 42.70

We instituted *inter partes* review (Paper 15)² in the proceedings listed in the Appendix and issued a consolidated Scheduling Order (Paper 16),

¹ This Order addresses the same issues in the *inter partes* reviews listed in the Appendix. Therefore, we issue one Order to be filed in all of the cases. The parties, however, are not authorized to use this style of filing in subsequent papers.

² Paper numbers are provided for IPR2016-01254, unless otherwise noted.

IPR2016-01254
Patent 8,457,113 B2

which sets the date for oral hearing to September 19, 2017, if oral hearing is requested by either party and granted by the Board. The parties requested an oral hearing pursuant to 37 C.F.R. § 42.70 in each of the *inter partes* review proceedings listed in the Appendix. *See, e.g.*, Paper 40; Paper 42. Upon consideration by the panel, the parties' requests are granted.

The hearing will commence at **10:00 AM** Eastern Time, on **September 19, 2017**, and will be conducted at the **UPSTO Headquarters, Ninth Floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, 22314**.³ The parties will be given a one hour break at 12:00 PM Eastern Time. The hearing will be open to the public for in-person attendance that will be accommodated on a first come first serve basis.

The parties have provided their proposals for the oral hearing. Upon review of the record, we grant amounts of time set forth in the table below for oral argument.

IPRs	Minutes for Oral Argument
YMAX's IPR2016-01256, IPR2016-01258, IPR2016-01260	60 minutes per side
Cisco's IPR2016-01254 and IPR2016-01257	30 minutes per side
Bright House Networks' IPR2016-01259, IPR2016-01261, IPR2016-01262, IPR2016-01263	60 minutes per side

Because Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable, each Petitioner will proceed first to present its case as to the challenged claims of the challenged patents and

³ *See* <https://www.uspto.gov/about-us/uspto-locations/alexandria-virginia-headquarters> for additional information.

IPR2016-01254
Patent 8,457,113 B2

instituted grounds of unpatentability. Thereafter, Patent Owner will respond to Petitioner's case and present its case on its motions to amend. After that, Petitioner will make use of the rest of its time for its rebuttal, responding to Patent Owner's specific arguments presented at the oral hearing, as well as responding to Patent Owner's case on its motions to amend. Patent Owner, then, will make use of the rest of its time for its rebuttal on only its motions to amend. No live testimony from any witness will be taken at the oral argument.

The parties are reminded that under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been so filed.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served no later than seven business days before the hearing date. They shall be filed with the Board no later than five business days prior to the hearing date. The parties must initiate a conference call with the Board at least three business days prior to the hearing to resolve any dispute over the propriety of each party's demonstrative exhibits. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case IPR2013-00041 (PTAB Jan. 27, 2014) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. *See also CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118) (The Board has the discretion to limit the parties' demonstratives to pages in the record should there be no easy resolution to objections over demonstratives.).

IPR2016-01254
Patent 8,457,113 B2

The Board expects lead counsel for each party to be present at oral hearing, although any backup counsel may make the actual presentation, in whole or in part. If lead counsel for either party is unable to attend the oral argument, the Board should be notified via a joint telephone conference call no later than five business days prior to the oral hearing to discuss the matter.

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. The hearing transcript will be entered in the record of these proceedings.

Any requests regarding special equipment or needs, such as for audio visual equipment, should be directed to Trials@uspto.gov. Requests for audio-visual equipment are to be made at least five business days in advance of the hearing date.

PETITIONER:

Patrick McPherson
Christopher Tyson
pdmcpherson@duanemorris.com
jtyson@duanemorris.com

PATENT OWNER:

Brent Bumgardner
John Murphy
bbumgardner@nbclaw.net
murphy@nelbum.com

APPENDIX⁴

U.S. Patent No.	<i>Inter Partes</i> Review	Petitioner's Oral Hearing Request	Patent Owner's Oral Hearing Request
7,764,777 B2	IPR2016-01258 IPR2016-01262	Paper 44 Paper 49	Paper 43 Paper 48
8,155,298 B2	IPR2016-01256 IPR2016-01259 IPR2016-01263	Paper 39 Paper 47 Paper 51	Paper 38 Paper 46 Paper 50
8,457,113 B2	IPR2016-01254 IPR2016-01257 IPR2016-01260 IPR2016-01261	Paper 40 Paper 43 Paper 44 Paper 49	Paper 42 Paper 42 Paper 43 Paper 48

⁴ Bright House Networks, LLC, WideOpenWest Finance, LLC, Knology of Florida, Inc., and Birch Communications are Petitioner in IPR2016-01259, -01261, -01262, and -01263.

YMax Corporation is Petitioner in IPR2016-01256, -01258, and -01260.

Cisco Systems, Inc. is Petitioner in IPR2016-01254 and -01257.