

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

DANIEL L. FLAMM,
Patent Owner.

Case IPR2016-01512
Patent RE40,264 E

Before MICHAEL R. ZECHER, CHRISTOPHER L. CRUMBLEY, and
JO-ANNE M KOKOSKI, *Administrative Patent Judges*.

ZECHER, *Administrative Patent Judge*.

ORDER
Oral Argument
35 U.S.C. § 316(a)(10) and 37 C.F.R. § 42.70

On February 14, 2017, we instituted an *inter partes* review as to claims 27, 31, 32, 34, 37, 40, 41, 44, 47, 48, and 50 of U.S. Patent No. RE40,264 E. Paper 6. Both parties request oral argument for this proceeding pursuant to 37 C.F.R. § 42.70(a). Papers 14, 15. The parties' requests are *granted*.

Petitioner, Samsung Electronics Co., Ltd. ("Samsung"), requests thirty (30) minutes, in total, to present oral arguments. Paper 15, 2. Patent Owner, Daniel L. Flamm ("Flamm"), does not request a specific amount of oral argument time. Paper 14, 2. We have reviewed the issues that the parties intend to address for each proceeding, and we agree with Samsung that each party should be accorded 30 minutes of total time to present oral arguments.

Samsung bears the ultimate burden of proof that the challenged claims are unpatentable based on the grounds of unpatentability ("grounds") instituted in this proceeding. 35 U.S.C. § 316(e) (stating "the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence"). Consequently, Samsung will proceed first to present its case as to the challenged claims and the grounds instituted in this proceeding. Samsung may reserve rebuttal time. Thereafter, Flamm will respond to Samsung's case. Samsung then will make use of its rebuttal time to respond to Flamm's case.

The hearing will commence at 9:00AM Eastern Time on Thursday, October 12, 2017, and it will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia (Hearing Room B). 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.

Pursuant to 37 C.F.R. § 42.70(b), demonstrative exhibits must be served no later than seven (7) business days before the hearing date. They shall be filed with

the Board no later than the time of the hearing. **Demonstrative exhibits are not evidence, but merely a visual aid for use at the hearing.** Demonstrative exhibits shall not introduce new arguments or evidence. The parties must initiate a conference call with us at least two (2) business days prior to the hearing date to resolve any dispute over the propriety of each party's demonstrative exhibits. Regardless of whether the propriety of any demonstrative exhibit is disputed by either party, we consider demonstrative exhibits only to the extent (1) that they elucidate the parties' arguments presented during the hearing; *and* (2) that they include only arguments and/or evidence already of record in this proceeding. For further guidance on what constitutes an appropriate demonstrative exhibit, the parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118). We take this opportunity to remind the parties that each presenter must identify clearly and specifically each 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 Board expects lead counsel for each party to be present at the hearing; however, any backup counsel may make the actual presentation, in whole or in part. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,758 (Aug. 14, 2012). If lead counsel for either party is unable to attend the hearing, the parties shall request a joint telephone conference call no later than two (2) business days prior to the hearing date to discuss the matter.

Requests for special accommodations or audio-visual equipment are to be made at least five (5) business days in advance of the hearing date. Such requests must be sent to Trials@uspto.gov. If the requests are not received timely, requested accommodations and/or equipment may not be available on the day of the hearing.

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PETITIONER:

Naveen Modi
Joseph E. Palys
Chetan R. Bansal
PAUL HASTINGS LLP
PH-Samsung-Flamm-IPR@paulhastings.com

PATENT OWNER:

Christopher Frerking
chris@ntknet.com