

ROUGH DRAFT

JUDGE BRADEN: This is Judge Georgianna Braden. The reason why we've asked for this phone call with the parties is because, as I'm sure you're aware, the Federal Circuit recently issued an en banc decision in Aqua Products, Inc. versus Matal. I believe that occurred on October 4, 2017.

So we are contacting the parties now because Patent Owner has filed a motion to amend -- contingent motion to amend in both proceedings. We are approximately six weeks away from oral arguments that are scheduled for November 30th, if the parties request them, and I would like to hear from both parties, starting with Patent Owner first, if you believe that Aqua Products has any impact on your motion to amend and if you believe any additional briefing is warranted in these proceedings.

Patent Owner, we'll hear from you first on behalf of Realtime.

MR. NOROOZI: Your Honor, I will begin. This is Kayvan Noroozi, and I'll also let my partner, William Rothwell, continue after I've made a few initial remarks, because this subject

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2 has sort of been raised with the Board a few
3 times before in various forms, both before Aqua
4 Products came down and since, and so I think
5 it's one that has largely been covered.

6 Before the Aqua Products decision was
7 issued, Patent Owner noted in its motion to
8 amend that the Federal Circuit would be deciding
9 Aqua Products en banc and that the decision
10 could shift the burden from Patent Owner to
11 Apple, and we preserve the right to have the
12 revised standard apply to our motion to amend
13 if, in fact, such a revised standard was handed
14 down by the Federal Circuit.

15 Apple sought additional briefing space
16 for its response before Aqua Products come down
17 on the basis that if Aqua Products were issued,
18 it would bear the burden -- sorry, that if Aqua
19 Products were issued in a manner that would
20 place the burden on Apple, Apple would now have
21 to say more and present more to the Board than
22 it otherwise would have in light of its new
23 burden. My partner William Rothwell can speak
24 more to the conversation because I was not
25 personally on the call.

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2 But my understanding is that we
3 explained that -- we had 25 pages of briefing in
4 our affirmative motion when the burden was on
5 us, and Apple had 25 pages to respond when the
6 burden was not on them, and so there was no
7 reason to give additional briefing or space for
8 them to say more than we were able to say
9 regardless of any shifts in burden. In fact,
10 the Board denied additional pages on that basis,
11 is my understanding, and went on to sort of
12 defer the issue of what would happen if Aqua
13 Products changed the law.

14 Apple proceeded with the understanding
15 that Aqua Products could come out the way that
16 it did, and so they submitted very lengthy
17 declarations, I believe over a hundred pages
18 each, from their expert attempting to put down
19 what they thought they needed to put down in
20 light of the possibility that they would bear
21 the burden under a shift in law in Aqua
22 Products.

23 We took the deposition of Apple's
24 expert. We addressed their arguments. We
25 addressed the lengthy discussions and the

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2 hundred-page-plus declarations and the reply
3 briefs that we submitted just this Wednesday,
4 and in our reply brief we addressed the import
5 of Aqua Products to this proceeding, and we did
6 all that within the 12-page limit of our reply.

7 We also agreed with Apple, in order to
8 get an extension, that Apple should be allowed
9 to submit a further brief, not to exceed
10 12 pages, to specifically and only discuss the
11 importance of Aqua Products onto these motions
12 to amend, but that Apple should not be
13 permitted -- of course this is a point that
14 Realtime made -- that Apple should not be
15 permitted to provide new evidence or submit new
16 expert testimony or make new arguments or
17 submit new prior art.

18 The record on those issues is now
19 closed. Apple had a full opportunity to do all
20 that in its response knowing that Aqua Products
21 could come out the way that it did. And there's
22 no reason to prejudice Realtime by sort of
23 opening the record back up for Apple.

24 So in short --

25 JUDGE BRADEN: Counsel, I want to make

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2 sure that I understand, that Patent Owner would
3 agree to allow Petitioner 12 additional pages to
4 respond --

5 MR. NOROOZI: To specifically --

6 JUDGE BRADEN: Yeah, go ahead.

7 MR. NOROOZI: To specifically and only
8 discuss the Federal Circuit's decision in Aqua
9 Products and what impact it may have as a matter
10 of law to the motions to amend, but not to
11 introduce new arguments or evidence or facts or
12 go back over the prior art and so forth.

13 JUDGE BRADEN: Very good. Thank you.
14 And did your colleague, Mr. Rothwell, have
15 something additional to add?

16 MR. ROTHWELL: No, that covers what I
17 would have said.

18 JUDGE BRADEN: Very good. Then we'll
19 hear from Petitioner.

20 MR. RENNER: Thank you, Your Honor.
21 We'll start out by just noting that opposing
22 counsel is correct that Apple and opposing
23 counsel did discuss earlier the potential of
24 Aqua Products, and it was in light of the page
25 extension request that was earlier solicited.

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