

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Telephonic hearing
Trials@uspto.gov Paper No. 11
571-272-7822 Entered: April 25, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTERN DIGITAL CORPORATION, Petitioner,
v.
SPEX TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2018-00082
Patent 6,088,802

Before LYNNE E. PETTIGREW, DANIEL N. FISHMAN, and
CHARLES J. BOUDREAU, Administrative Patent Judges.
FISHMAN, Administrative Patent Judge.

TELEPHONE CONFERENCE

MAY 9, 2018

12:00 P.M. (C.S.T.)

Job Number: 141987



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Telephonic hearing

TELEPHONIC APPEARANCES:

FOR PETITIONER:

Brian Buroker, Esquire
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, NW
Washington, DC 20036

FOR PATENT OWNER:

Alfred Fabricant, Esquire
Peter Lambrianakos, Esquire
Vincent Rubino, III, Esquire
Enrique Iturralde, Esquire
Brown Rudnick
Seven Times Square
New York, NY 10036

1 Telephonic hearing

2 YOUR HONOR FISHMAN: Conference call
3 regarding two cases: IPR 201800082, IPR
4 201800084.

5 Patent Owner, you've requested this
6 call to discuss SAS issues. Please
7 proceed.

8 MR. LAMBRIANAKOS: Thank you, Your
9 Honor. This is Peter Lambrianakos for the
10 patent owner. We asked to address these
11 issues because as the Board is aware,
12 these are two of the first cases where the
13 Board has instituted on the entirety of a
14 petition, even though the petitioner only
15 met its burden as to a subset of the
16 challenged claims.

17 82 IPR, petitioner met its burden
18 only with respect to two of the challenged
19 claims, which are claims 38 and 39 of the
20 patent, and in the 84 IPR, the petitioner
21 met its burden with respect to three
22 claims but not claim 56.

23 And so we're seeking the Board's
24 guidance on how to proceed, specifically
25 first with respect to the 82 IPR. Our

1 Telephonic hearing
2 question there is: If the patent owner
3 elects to waive its patent owner response,
4 would the petitioner be permitted to file
5 any paper in response to the institution
6 decision?

7 And specifically, our question is
8 whether it would be permitted to present
9 arguments or evidence addressing the
10 claims as to which the petitioner did not
11 meet its burden on institution in its
12 original petition.

13 YOUR HONOR FISHMAN: Petitioner,
14 would you like to chime in?

15 MR. BUROKER: Yes, Your Honor. This
16 is Brian Buroker on behalf of the
17 petitioner. First, I'd like to say that
18 we haven't had an opportunity to really
19 consider that issue. We were asked to
20 join a conference call, status conference
21 with the Board. We asked what they wanted
22 to address, and they just said generally
23 they wanted to address the post-stat
24 issues and how the Board might react. And
25 there wasn't a specific proposal made to

1 Telephonic hearing
2 us before this call, except two hours ago
3 in an email, that they might be waiving
4 their patent owner response.

5 And so we really haven't had a
6 chance, Your Honor, to consult with the
7 client and see what we would do, what we
8 believe an accurate position to be. So I
9 think that's my initial reaction is that
10 this call may be a bit premature and that
11 we may need to have a further
12 meet-and-confer in either a follow up
13 commission or a status conference. But in
14 general, we believe we should be entitled
15 to supplement the record in some form or
16 fashion with respect to the claims that
17 the Board found, at least in the
18 institution decision, where there had not
19 been a reasonable likelihood of showing
20 unpassability. And that either through
21 supplemental information or additional
22 briefing and expert declaration testimony,
23 if necessary, that that should be what
24 happens in these post-stat cases in which
25 the Board institutes on more claims than

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.