

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SONOS, INC.,  
Petitioner,

v.

IMPLICIT, LLC,  
Patent Owner.

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IPR2018-00766 (Patent 7,391,791 B2)<sup>1</sup>  
IPR2017-00767 (Patent 8,942,252 B2)

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Before MICHELLE N. WORMMEESTER, SHEILA F. McSHANE, and  
NABEEL U. KHAN, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

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<sup>1</sup> This Order addresses issues that are identical in each of these cases. Therefore, we exercise our discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in any subsequent papers without prior authorization.

IPR2018-00766 (Patent 7,391,791 B2)  
IPR2017-00767 (Patent 8,942,252 B2)

## BACKGROUND

On April 2, 2019, the Board received an email from Patent Owner requesting authorization to permit the videotaping of Petitioner's declarant Dr. Roman Chertov in a deposition scheduled for April 9, 2019. Petitioner opposes the request. The Board conducted a conference call with the parties on April 4, 2019. A reporter was on the call, and Patent Owner agreed to enter a transcript of the call into the record.

Patent Owner asserts that authorization for videotaping should be permitted because videotaping will allow evidence to be preserved should credibility issues arise. Patent Owner alleges that the testimony in the deposition is expected to be related to disputed issues on source code interpretation where witness demeanor could be relevant. Patent Owner indicates that, as of this time, it is not seeking to have the videotape submitted in these proceedings. Patent Owner further stated that it would cover the cost of recording the deposition in the requested manner, and to provide a copy to Petitioner.

Petitioner opposes Patent Owner's request for videotaping because it is argued that Patent Owner has not established that there is any evidence to suggest that Dr. Chertov's credibility is at issue, and the witness is offering expert opinions and is not a fact witness. Petitioner asserts that Patent Owner has represented that Patent Owner intends to use the videotaped deposition in a co-pending litigation, and not in these proceedings. Petitioner contends that videotaping would subject the witness to unnecessary stress. Petitioner also argues that, absent agreement of the parties to videotaping, authorizing Patent Owner's request amounts to a broad grant of any one-sided request under 37 C.F.R. § 42.53(a).

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After hearing the respective positions of the parties, we authorize videotaping the testimony of Dr. Roman Chertov, provided that Patent Owner pays costs associated with videotaping the deposition, including costs of providing a copy of the videotape to Petitioner. The purpose of this authorization is to preserve an opportunity for the panel to observe the recorded deposition testimony, should the need or desire arise. The authorization to conduct a videotaped deposition does not render the recording admissible in this, or another, proceeding. The recording may not be submitted in this proceeding without additional authorization under 37 C.F.R. § 42.53(a).

#### ORDER

It is, therefore,

ORDERED that Patent Owner is authorized to videotape the deposition testimony of witness, Dr. Roman Cherov;

FURTHER ORDERED that Patent Owner shall bear the cost of the videotaped deposition; and

FURTHER ORDERED that authorization granted by this Order does not extend to the submission of the videotaped deposition as evidence in this proceeding.

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PETITIONER:

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