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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONOS, INC., Petitioner,

V.

IMPLICIT, LLC, Patent Owner.

IPR2018-00766

U.S. Patent No. 7,391,791

IPR2018-00767

U.S. Patent No. 8,942,252

PREHEARING CONFERENCE

June 13, 2019

11:00 a.m.

Reported by:

Jessica Schmidt

David Feldman Worldwide

<p style="text-align: right;">Page 2</p> <p>1 2 A P P E A R A N C E S: 3 (Telephonic) 4 5 LEE, SULLIVAN, SHEA & SMITH, LLP 6 Attorneys for Petitioner 7 656 W. Randolph Street, Suite 5W 8 Chicago, Illinois 60661 9 10 BY: COLE B. RICHTER, ESQ. 11 RORY SHEA, ESQ. 12 13 THE DAVIS FIRM 14 Attorneys for Patent Owner 15 213 North Fredonia, Suite 230 16 Longview, Texas 75601 17 18 BY: CHRISTIAN HURT, ESQ. 19 KIRK BOSS, ESQ. 20 21 ADMINISTRATIVE PATENT JUDGES: 22 Ms. Sheila F. McShane 23 Ms. Michelle N. Wormmeeser 24 Mr. Nabeel U. Khan 25</p>	<p style="text-align: right;">Page 4</p> <p>1 Proceedings 2 on the docket? 3 MR. RICHTER: We would be 4 happy to, Your Honor. This is 5 Cole Richter, for petitioner. 6 JUDGE MCSHANE: Thank you. 7 So we saw some e-mails from the 8 parties on this call. The purpose 9 of this call is to just discuss 10 logistics for the hearing that 11 will occur on Monday. 12 We're emphasizing here. 13 We're not going to be entertaining 14 any arguments on merits at all. 15 It's purely logistical. 16 We received a request from 17 the petitioner who wanted to know 18 about the status of the motion to 19 exclude and whether it was going 20 to be ruled on early. The answer 21 to that is: We will not be ruling 22 on the motion to exclude until 23 post hearing. With that, we would 24 welcome any arguments that the 25 parties have on the motion to</p>
<p style="text-align: right;">Page 3</p> <p>1 Proceedings 2 JUDGE MCSHANE: This is 3 Judge McShane on the line. On the 4 line as well are Judges 5 Wormmeester and Khan. We're here 6 on the Sonos v. Implicit matter, 7 IPR2018-00766 and -00767. 8 May I have appearances, 9 please, from petitioner first? 10 MR. SHEA: Rory Shea, on 11 behalf of Sonos, the petitioner, 12 from Lee, Sullivan & Smith. With 13 me also is Cole Richter on behalf 14 of Sonos. 15 JUDGE MCSHANE: Thank you. 16 MR. HURT: Good morning, 17 Your Honor. This is Christian 18 Hurt. With me on the phone is my 19 colleague, Kirk Boss. We're ready 20 to proceed. 21 JUDGE MCSHANE: Thank you. 22 All right. Well, I heard earlier 23 that there is a court reporter on 24 the line. Whomever arranged that, 25 can they get a transcript entered</p>	<p style="text-align: right;">Page 5</p> <p>1 Proceedings 2 exclude. 3 Additionally, petitioner 4 asked for some ideas on what the 5 issues were that the Board was 6 concerned about. So let me just 7 say this: The parties have the 8 prerogative to put on whatever 9 kind of arguments, with supporting 10 evidence, that they wish. This 11 discussion is by no means meant to 12 limit the parties to any specific 13 topics. 14 That said, we always are 15 particular, if you will, about the 16 record in the case. We'll caution 17 the parties that any arguments 18 that are presented that relate to 19 issues that are not in the record 20 will not be entertained. But, in 21 any event, here are a listing of 22 some of the issues that we may 23 have some interest in: 24 First of all, there's the 25 antedating issue. That is a big</p>

<p style="text-align: right;">Page 6</p> <p>1 Proceedings 2 issue in the case. We'll note 3 that there's a fair amount of 4 evidence that's been put in on 5 this issue. We recognize that 6 there's only so much time for this 7 hearing. We would appreciate it 8 if the parties could focus their 9 arguments on the evidence that 10 they think is of greatest 11 importance. That seems to be 12 logical but we'll just point that 13 out. Again, given the amount of 14 evidence that is in the record. 15 Second issue is on 16 inurement. There are some 17 arguments in the papers on that. 18 It's a smaller issue. To the 19 extent that the parties wish to 20 address that issue, a brief 21 argument where you indicate the 22 application of the facts of the 23 law. That's for both respective 24 parties on both sides of the 25 argument. Any limited argument</p>	<p style="text-align: right;">Page 8</p> <p>1 Proceedings 2 Patent owner is going to present 3 opposition and then the petitioner 4 is going to do a rebuttal or have 5 the opportunity to do a rebuttal, 6 if they wish, and then the patent 7 owner will have the opportunity to 8 provide a brief surrebuttal. 9 So the issues noted is that 10 the burden is on the patent owner 11 on the antedating issue. For 12 this, the petitioner can respond 13 to arguments related to antedating 14 because patent owner is going to 15 have that antedating issue in 16 their case, if you will. The 17 petitioner can respond during 18 their rebuttal time. And we'll 19 note that the rebuttal time, under 20 the trial guidance, is limited to 21 half the total time that the 22 petitioner may have. So, here, 23 patent owner can then reserve a 24 brief surrebuttal time to respond 25 to the arguments that the</p>
<p style="text-align: right;">Page 7</p> <p>1 Proceedings 2 would be fine on that. We would 3 appreciate that. 4 There's probably very 5 little need for the parties to 6 spend any significant time on any 7 objective indicia issues. 8 On the Janevski 9 disclosures, there, again, we 10 would appreciate it if you would 11 focus on the important issues in 12 evidence related to that issue. 13 Let's see. Those are the 14 topics we're most interested in or 15 not that interested in, generally. 16 Again, whatever the parties want 17 to talk about, that's up to them. 18 Again, if it's within the record. 19 Okay. Now, one thing we 20 would like to comment on is the 21 order of the presentation. The 22 trial order went out probably 23 about two weeks ago and the order 24 is going to be that the petitioner 25 is going to do their opening.</p>	<p style="text-align: right;">Page 9</p> <p>1 Proceedings 2 petitioner has made. 3 That's it. That's really 4 all we had. 5 MR. SHEA: Rory Shea for 6 petitioner. I just want to make 7 sure I'm clear. 8 With respect to this 9 antedating issue, did I take from 10 what you said there that you guys 11 would not like to hear some talk 12 at all about the antedating issue 13 on the opening presentation? 14 JUDGE MCSHANE: No, I'm not 15 suggesting that. All 16 I'm suggesting is that you will -- 17 you have discretion. It's a big 18 issue in the case. So however you 19 want to use your time, you know. 20 If it's a big issue in the case, I 21 would suggest you spend time on 22 it, as much time as you need. 23 That said, you won't be afforded 24 the opportunity to respond to the 25 patent owner. That was the only</p>

<p style="text-align: right;">Page 10</p> <p>1 Proceedings 2 importance of what I stated there. 3 MR. SHEA: Great. Thank 4 you. 5 JUDGE MCSHANE: Anything 6 else? 7 MR. SHEA: Rory Shea. I 8 know you guys said at the 9 beginning that you're willing to 10 entertain argument at the hearing 11 on the motions to exclude. In 12 terms of where and what -- when 13 that happens in the sequencing 14 that we just discussed, is it 15 similarly that we have our 16 discretion if we want to raise 17 that in our opening and, for 18 instance, that that would be 19 acceptable? 20 JUDGE MCSHANE: Well, it's 21 petitioner's motion, right? 22 MR. SHEA: Right, correct. 23 JUDGE MCSHANE: The answer 24 is yes. You got the burden, 25 right?</p>	<p style="text-align: right;">Page 12</p> <p>1 Proceedings 2 what, if any, corrective action 3 the Board would like us to take 4 regarding this citation omission? 5 JUDGE MCSHANE: Well, 6 Counsel, we're not going to 7 correct the record on that. 8 Inadvertent or not, typos and 9 things like that is fine but 10 adding citations is a whole 11 different thing. If an argument 12 comes up -- rather, if a question 13 comes up from the panel, you know, 14 for it and we request additional 15 law, that's another situation. 16 That will be dealt with at the 17 hearing. Thank you. 18 MR. RICHTER: Okay. Thank 19 you, Your Honor. It's not crucial 20 to the legal argument set forth. 21 Finally, the other issue 22 unrelated is we received an e-mail 23 from Mr. Dill in regard to the 24 audio-visual equipment request. 25 He indicated that his records</p>
<p style="text-align: right;">Page 11</p> <p>1 Proceedings 2 MR. SHEA: Yes. I think 3 that's right, Your Honor. 4 JUDGE MCSHANE: Okay. With 5 that, if there's nothing else, we 6 will adjourn the call. 7 MR. RICHTER: This is Cole 8 Richter. Just two small things I 9 would like to say. They are 10 mostly housekeeping issues. 11 In going through our 12 briefs, we noticed that a case 13 citation was inadvertently removed 14 from petitioner's reply brief. 15 That's on page five. There's a 16 case citation of Marker VCR Bard 17 (phonetic). Right after that 18 case, it should have also cited 19 another federal circuit case, Hon 20 V. Long. 21 In fact, the table of 22 authority actually indicates that 23 Hon V. Long was cited on that 24 page. It was inadvertently 25 removed. I'm just wondering,</p>	<p style="text-align: right;">Page 13</p> <p>1 Proceedings 2 showed that the oral hearing was 3 scheduled for June 18th in Dallas, 4 Texas. I'm just wondering if, 5 perhaps, the office's records have 6 not been updated in response to 7 Your Honor's recent rescheduling 8 or reverting the hearing back to 9 June 17th. 10 JUDGE MCSHANE: That's been 11 corrected in our records. We'll 12 all be there on Monday. Everybody 13 will be in the location to show up 14 at; Alexandria, Virginia at 1:00 15 on Monday. 16 Thank you. With that, 17 we're adjourned. 18 (Time noted: 11:14 a.m.) 19 20 21 22 23 24 25</p>

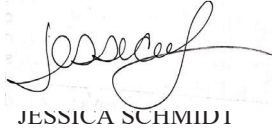
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Proceedings
CERTIFICATION

I, JESSICA SCHMIDT, a Notary Public in
and for the State of New York, do hereby
certify:

THAT the foregoing is a true and
accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto
set my hand this 21st day of June, 2019.



JESSICA SCHMIDT

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