

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SLING TV L.L.C., SLING MEDIA, L.L.C.,  
DISH NETWORK L.L.C., DISH TECHNOLOGIES L.L.C.,  
Petitioner,

v.

REALTIME ADAPTIVE STREAMING LLC,  
Patent Owner.

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IPR2018-01331<sup>1</sup> (Patent 8,867,610 B2)  
IPR2018-01342<sup>2</sup> (Patent 8,934,535 B2)

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Before KEVIN W. CHERRY, GARTH D. BAER, and  
NABEEL U. KHAN, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

ORDER<sup>3</sup>

Granting the Petitioner's Requests for Oral Hearing  
*37 C.F.R. § 42.70*

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<sup>1</sup> ARRIS SOLUTIONS, INC., who filed a petition in IPR2019-00746 has been joined as petitioners in this proceeding.

<sup>2</sup> Google LLC, who filed a petition in IPR2019-00748, has been joined as a Petitioner in this proceeding. Comcast Cable Communications, LLC, who filed a petition in IPR2019-00760, has also been joined as a Petitioner in this proceeding.

<sup>3</sup> We issue one Order to be filed in each case. The parties are not authorized to use a multi-case caption.

IPR2018-01331 (Patent 8,867,610 B2)  
IPR2018-01342 (Patent 8,934,535 B2)

Petitioner filed a request for an oral hearing in each of the above-captioned cases. Paper 31 (IPR2018-01331); Paper 35 (IPR2018-01342). Patent Owner filed a paper in each of the proceedings stating that no oral hearing was necessary because these proceedings should be terminated. Paper 32 (IPR2019-01331); Paper 36 (IPR2018-01342). Petitioner does not request a specific length of argument time. The requests for oral hearing are *granted*.

The oral hearing will be held on **Thursday, December 5, 2019**, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, commencing at **1:00 PM Eastern Time**. There is a substantial overlap of issues between the two cases. Therefore, although the cases are not consolidated, the cases will be argued together and a single transcript created. Each party will have **45 minutes** of total argument time for the two cases. The parties are responsible for allocating their argument time.

Petitioner bears the ultimate burden of proof that the claims as challenged in the Petition are unpatentable. Thus, Petitioner will proceed first by presenting up to 45 minutes of argument with respect to the challenged claims. Patent Owner will follow with up to 45 minutes of responsive argument. Before commencing argument, either party may reserve time for rebuttal argument.

The parties may only rely upon evidence that has been previously submitted in the proceeding and may only present arguments that have been previously made in the submitted papers. No new evidence or arguments may be presented at the hearing. The parties have not requested to present live testimony during the hearing; thus, live testimony will not be permitted. The arguments will be limited to patentability, and should not address the pending motions to terminate.

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*Official Record*

The Board will provide a court reporter. A single transcript shall be created for both cases, and the reporter's transcript shall constitute the official record of the oral argument.

*Pre-Hearing Conference Call*

Per the update to the Office Patent Trial Practice Guide, either party may request a pre-hearing conference call. Office Patent Trial Practice Guide, August 2018 Update, 83 Fed. Reg. 39,989 (Aug. 13, 2018) (found at the following link to the USPTO website: <https://go.usa.gov/xU7GP>) (“Practice Guide Update”). Requests for a pre-hearing conference must be made by November 30, 2019. To request such a conference, an email should be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov). The email shall include several dates and times of availability for both parties that are generally no later than three business days prior to the oral argument and shall include a list of issues to be discussed during the conference. One of the issues that may be discussed is any objections to demonstrative exhibits, but the panel may reserve ruling on such objections until a later time. Please refer to the Practice Guide Update for more information about pre-hearing conference calls.

*Demonstrative Exhibits*

Demonstrative exhibits are not evidence and may not introduce new evidence or arguments. Demonstrative exhibits should be clearly marked as such. For example, each slide may be marked with the words “DEMONSTRATIVE EXHIBIT – NOT EVIDENCE” in the footer. Any demonstrative exhibit not served on a party or submitted to the Board may not be used during the hearing.

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At least **five (5) business days** prior to the hearing, each party shall *serve* on the other party any demonstrative exhibits it intends to use during the hearing. *See* 37 C.F.R. § 42.70(b). Demonstrative exhibits should be *filed* at the Board no later than **three (3) business days** before the hearing.

The parties must meet and confer in good faith to resolve any objections to the propriety of any demonstrative exhibit. Any objection that is not timely presented will be deemed waived. If any objections to demonstrative exhibits cannot be resolved, the objecting party may file a statement of objections with the Board at least **three (3) business days** before the hearing. The statement of objections should identify with particularity each demonstrative exhibit subject to objection and include a brief statement (no more than a few sentences) of the reason for such objection. No argument or further explanation is permitted. Nor is a party permitted to file a response to the statement of objections.

The Board will consider the statement of objections and may schedule a conference call to discuss the objections or may discuss the objections during the pre-hearing conference call, if requested. Otherwise, the Board will reserve ruling on the objections until the time of the hearing. The parties are advised to limit objections to demonstrative exhibits to egregious violations that are prejudicial to the administration of justice. Generally, if the content of a slide cannot be readily associated with an argument made, or evidence referenced, in a substantive paper of record, the slide is inappropriate. Conversely, if the content of a slide can be readily associated with an argument made, or evidence referenced, in a substantive paper, it is proper. Ideally, parties should indicate on each slide where support may be found in a substantive paper and/or exhibit of record.

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At the beginning of the hearing, each party will provide the court reporter with a hard copy of any demonstrative exhibits. At least one judge on the panel will be attending the oral hearing from a remote location and may not be able to view the projection screen in the hearing room. Thus, during the hearing, counsel must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced to ensure clarity and accuracy of the transcript.

#### *Public Access to the Hearing Room*

The oral hearing will be open to the public, and seating will be accommodated on a first-come, first-served basis. The parties are directed to refrain from disclosing any confidential information during the hearing or including any confidential information in a demonstrative exhibit. If the parties have any concern about disclosing confidential information, they must contact the Board at least **three (3) business days** before the hearing to discuss the matter.

#### *Attendance of Counsel*

The Board normally expects lead counsel for each party to be present in person at the oral hearing. However, we will permit parties to attend remotely. If either party expects that its lead counsel will not be attending the oral argument in person or would prefer to attend remotely, the parties should initiate a joint telephone conference with the Board no later than **three (3) business days** prior to the oral hearing to discuss the matter.

#### *Remote Viewing*

A party may request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. The available locations include the Texas Regional Office in Dallas, Texas; the

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